## N. Ministry of Public Works (Buildings Construction Department)

### Government Claim No. 31, UNCC Claim No. 5000159

Table 14. Summary Table for Ministry of Public Works (Buildings Construction Department)

| Loss type/Loss element | Amount claimed US$ | Amount Recommended US$ | Paragraph references |
|---|---|---|---|
| Contract | | | |
| a) Buildings construction department | 21,895,743 | 8,033,000 | 451-460 |
| b) Local roads construction department | 9,372,359 | 3,501,000 | 461-463 |
| c) Motorways department | 43,099,324 | 18,994,000 | 464-466 |
| d) Sanitation department | 17,315,507 | 0 | 467-469 |
| Sub-total | 91,682,933 | 30,528,000 | |
| Real property | | | |
| a) Buildings construction department | 12,430,834 | 5,918,000 | 470-474 |
| b) Buildings maintenance department | 11,092,052 | 5,095,000 | 475-477 |
| c) Roads maintenance department | 42,336,270 | 18,328,000 | 478-482 |
| d) Bubiyan Bridge | 16,578,936 | 4,741,000 | 483-489 |
| Sub-total | 82,438,092 | 34,082,000 | |
| Other losses | | | |
| a) Sanitation department's lost business records | 2,905,938 | 239,000 | 490-493 |
| Total | 177,026,963 | 64,849,000 | |
| Interest | 28,133,480 | | |

### 1. Contract - US$91,682,933

#### (a) Introduction

449. In respect of the projects set out below, MPW claims compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional costs of completing the contracts. 109/ In the latter case, MPW asserts that the additional costs are to cover increased costs in the post-liberation period.

450. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The

evidence shows that part only of the losses claimed is attributable to these factors.

(b) Buildings construction department - US$21,895,743

451. MPW asserts that over thirty building construction contracts being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait.

452. A contract for the construction of a fishing port had not been formally concluded at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract price would have been if the contract had been finalised and the price paid for the works after liberation. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of this pre-invasion arrangement. It therefore recommends compensation only for that portion of the cost of the post-liberation contract referable to repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait (subject to verification and valuation).

453. Contracts for the following projects have not yet been resumed:

(a) construction of a market;

(b) construction of a fire fighting training school;

(c) construction and maintenance of a musical and theatrical art college; and

(d) expansion of two mosques.

454. The Panel considers these contracts at paragraphs 455 to 460 below.

455. The Panel notes that responsibility for the construction of the market was transferred to Kuwait Municipality and then to a private investor (who has now completed construction). The Panel recommends that no compensation be awarded for the interruption of this contract. MPW has, in fact, saved the cost of not completing the market.

456. The Panel notes that responsibility for the construction of the fire fighting training school has been transferred to Kuwait Municipality and that it is intended for the contract to resume at some stage. The Panel recognises that part of the loss from the interruption of this contract will thus be borne by MPW and part by Kuwait Municipality. However, to require MPW and Kuwait Municipality to each claim for its portion of the

loss would be too technical and rigid an approach, given that both parties are political subdivisions of the Government. 110/ The Panel therefore recommends that compensation be awarded to MPW as set out at paragraph 37 above.

457. In relation to the interrupted contract to construct and maintain the musical and theatrical art college, the Panel finds that MPW intends to resume the contract in the future. The Panel therefore recommends that compensation be awarded in accordance with paragraph 37 above.

458. In relation to the interrupted contract for the expansion of the two mosques, the Panel finds that, after liberation, the expansion of one of the mosques was completed by a private donor. The Panel recommends that no compensation be awarded for the interruption of that portion of the contract. MPW has, in fact, saved the cost of not completing the expansion of the mosque.

459. However, the Panel finds that MPW intends to complete the expansion of the second mosque in the future. The Panel therefore recommends that compensation be awarded as set out at paragraph 37 above for the interruption of that portion of the contract.

460. In light of the above, the Panel recommends compensation in the amount of US$8,033,000 out of the US$21,895,743 claimed.

(c) Local roads construction department - US$9,377,369

461. MPW asserts that ten road construction contracts being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait. For the nine contracts that have resumed, the Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

462. A contract for the construction of roads on Bubiyan Island has been abandoned by MPW. The Panel finds that MPW has failed to show that the contract was abandoned as a direct result of Iraq's invasion and occupation of Kuwait. The use of the island by only a limited number of MoD employees has not altered as a result of Iraq's invasion and occupation of Kuwait. As set out at paragraph 39 above, the Panel recommends that the appropriate compensation in such a case is the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait at such time as it would be reasonable, in all the circumstances, to expect repair to have taken place (with adjustments, in appropriate cases, for inadequate accounting for depreciation and saved expenses). 111/ Any other loss arises from MPW's independent decision to abandon the project.

463. In light of the above, the Panel recommends compensation in the amount of US$3,501,000 out of the US$9,372,359 claimed.

(d) Motorways department - US$43,099,324

464. MPW asserts that three projects being supervised by the above-captioned department were interrupted by Iraq's invasion and occupation of Kuwait. For two of the projects, the Panel has calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

465. MPW had not formally concluded any contracts for the third project at the time of Iraq's invasion and occupation of Kuwait. MPW claims the difference between its estimate of what the contract prices would have been had the contracts been finalised and its estimate of the price of the anticipated post-liberation contracts. The Panel finds, applying the principles set out at paragraph 153 above, that there is insufficient evidence of consensus as to the essential provisions of these pre-invasion arrangements and so does not recommend any compensation in respect of them.

466. In light of the above, the Panel recommends compensation in the amount of US$18,994,000 out of the US$43,099,324 claimed.

(e) Sanitation department - US$17,315,507

467. MPW asserts that eight contracts being supervised by the sanitation department were interrupted by Iraq's invasion and occupation of Kuwait. The Panel notes that one of the interrupted contracts was resumed by the Public Authority for Agriculture Affairs and Fish Resources ("PAAF"). The Panel recognises that part of the loss from the interruption of this contract will thus be borne by MPW and part by PAAF. However, to require MPW and PAAF to each claim for its portion of the loss would be too technical and rigid an approach, given that both parties are political subdivisions of the Government. 112/ The Panel has thus calculated the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above.

468. The Panel finds that MPW saved expenses by not being party to five of the eight contracts for the period from 2 August 1990 until they were resumed. 113/ The amount of such savings exceeds the amount of the losses claimed that is attributable to the factors set out at paragraph 450 above for all eight contracts.

469. Accordingly, the Panel does not recommend any compensation for the interruption of the eight contracts being supervised by the sanitation department.

2. Real property - US$82,438,092

(a) Buildings construction department - US$12,430,834

470. MPW asserts that the above-captioned department supervised the repair of a number of Government owned buildings damaged as a direct result of Iraq's invasion and occupation of Kuwait.

471. The Panel notes that the contractor for the repairs to the VIP lounge at the Kuwait International Airport was chosen without recourse to the normal competitive procurement procedures. However, the Panel finds that the absence of such procedures did not lead to increased costs. Furthermore, the works were performed in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for a secure arrival point for visitors to the GCC summit discussed at paragraph 203 above, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

472. MPW's claim in relation to the police station complex at Wafra includes the cost of replacing its foundations. The Panel has made an adjustment to reflect the fact that the foundations did not require replacement.

473. The Panel finds that adjustments should also be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

474. In light of the above, the Panel recommends compensation in the amount of US$5,918,000 out of the US$12,430,834 claimed.

(b) Buildings maintenance department - US$11,092,052

475. MPW asserts that the above-captioned department supervised the repair of a number of Government owned buildings damaged as a direct result of Iraq's invasion and occupation of Kuwait.

476. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

477. In light of the above, the Panel recommends compensation in the amount of US$5,095,000 out of the US$11,092,052 claimed.

(c) Roads maintenance department - US$42,336,270

478. MPW seeks compensation for the costs incurred by the above-captioned department in repairing damage to Kuwait's road network (including road signs and traffic signals). 114/

479. The Panel notes that one of the contracts for the repair of roads and squares was undertaken in the immediate post-liberation period when prices of goods and services were, in general, higher than the norm. Applying the test set out at paragraph 31 above, the Panel finds that, in light of the Government's need for secure access to the GCC summit discussed at paragraph 293 above, the works were of such urgency that MPW could not reasonably be required to wait until prices had returned to normal patterns.

480. MPW's claim does not make any allowance for depreciation. The Panel finds, however, that an adjustment for inadequate accounting for depreciation should be made because the repairs have resulted in an increase in the useful life of those sections of the road network that were repaired.

481. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

482. In light of the above, the Panel recommends compensation in the amount of US$18,328,800 out of the US$42,336,270 claimed.

(d) Bubiyan Bridge - US$16,578,936

483. MPW asserts that the bridge linking Bubiyan Island with Kuwait's mainland was damaged by explosive ordnance during Iraq's invasion and occupation of Kuwait.

484. The repairs to the bridge had not commenced when MPW submitted its claim. It therefore seeks its estimate of the costs of repairs described as "emergency" repairs, but which were not commenced until mid-1994, permanent repairs to be undertaken thereafter, and related consultant's services.

485. The Panel finds that the "emergency" repairs were undertaken at the cost estimated by MPW in its claim. However, the contract for the permanent repairs was entered into in September 1998 at a price less than the amount estimated by MPW in its claim. The Panel has made an adjustment to correct this overstatement.

486. The Panel finds that it would have been reasonable, in all the circumstances, to expect the permanent repairs to have taken place immediately after the "emergency" repairs. The Panel has made adjustments to reflect the increased costs that resulted from the delay between the "emergency" and the permanent repairs. These increased costs resulted from the effect of inflation during the delay and the fact that some of the "emergency" repairs were duplicated by the permanent repairs.

487. The Panel has considered MPW's estimate of the cost of the consultant's services as a percentage of the estimated repair costs. The Panel finds that an adjustment should be made to reflect an overstatement in this percentage and the reduction in repair costs resulting from the adjustments discussed at paragraphs 485 and 486 above.

488. Further, the Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

489. In light of the above, the Panel recommends compensation in the amount of US$4,741,000 out of the US$16,578,936 claimed.

### 3. Other losses - US$2,905,938

#### (a) Sanitation department's lost business records - US$2,905,938

490. This claim relates to a project to clean, survey and rehabilitate Kuwait's sewerage system. Prior to Iraq's invasion and occupation of Kuwait, the system had been divided into thirteen sectors. Contractors, under the supervision of consultants, would clean each sector and then draw a camera through the clean pipes. The resulting videotape would then be viewed in order to decide which parts of the sector required replacement. MPW's claim relates to the loss of the videotapes of the fifth and sixth sectors.

491. At the time of Iraq's invasion and occupation of Kuwait, almost one third of the fifth sector had been videotaped. MPW's engineers were able to recall from the videotapes viewed before Iraq's invasion and occupation of Kuwait that many of the pipes were heavily corroded and would require replacement in the near future. MPW directed its consultants to plan for immediate, rather than gradual, replacement of the pipes and claims the amount paid for the work undertaken on the fifth sector before Iraq's invasion and occupation of Kuwait. The Panel recommends that no compensation be awarded for the loss of the fifth sector videotapes because the plan for repairs was based on engineers' recollections of the contents of the videotapes and there is no evidence that immediate replacement of the pipes was more expensive than gradual replacement.

492. In relation to the sixth sector of the sewerage system, MPW claims the approximately 13 per cent of the contract prices that had been paid to the contractor and consultant up until the time of Iraq's invasion and occupation of Kuwait, less the amount saved by MPW because the post-liberation contract with the contractor was entered into at a lower price than the pre-invasion contract. 115/ The Panel recommends that compensation be awarded for the loss of the sixth sector videotapes because MPW did not have sufficient detail of the condition of the sixth sector to form any reliable opinion as to its condition. The Panel agrees with MPW's valuation of its loss. However, an adjustment should be made for insufficient evidence.

493. In light of the above, the Panel recommends compensation in the amount of US$239,000 out of the US$2,905,938 claimed.

## O. Ministry of Health

### Government Claim No. 36, UNCC Claim No. 5000164

Table 15. Summary Table for Ministry of Health

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | | | |
| a) Basic repair contracts | 766,046 | 618,000 | 494-498 |
| b) Individual work orders | 5,903,776 | 1,189,000 | 494-498 |
| c) Estimated cost for repairs not yet done | 4,643,597 | 312,000 | 494-498 |
| Sub-total | 11,313,419 | 2,119,000 | |
| Other tangible property | | | |
| a) Medicine | 38,206,743 | 31,191,000 | 499-502 |
| b) Medical equipment and instruments | 18,193,258 | 6,484,000 | 503-506 |
| c) Ambulances | 597,623 | 12,000 | 507-508 |
| d) Ordinary transportation vehicles | 440,338 | -257,000 a/ | 509-511 |
| e) Boats | 5,445,281 | 4,351,000 | 512-514 |
| f) Central stores | 35,941,726 | 21,536,000 | 515-517 |
| g) Other equipment | 5,906,316 | 3,467,000 | 518-520 |
| h) Furniture, fixtures and office equipment | 3,403,697 | 2,032,000 | 521-523 |
| Sub-total | 108,134,982 | 68,816,000 | |
| Bank accounts and securities | | | |
| a) Currency | 28,422 | 13,000 | 524 |
| Contract | 4,319,609 | 619,000 | 525-528 |
| Public service expenditures | | | |
| a) Additional transportation costs | 3,789,668 | 0 | 529-535 |
| b) Additional expenses of overseas treatment | 136,856,934 | 66,000,000 | 529-535 |
| c) Additional labour costs | 3,887,674 | 0 | 529-535 |
| Sub-total | 144,534,276 | 66,000,000 | |
| Payment or relief to others | | | |
| a) Relief paid to employees | 153,862,756 | 58,656,000 | 536-539 |
| Total | 422,193,464 | 196,223,000 | |
| Interest | 67,095,560 | | |

a/ Negative amount represents account taken of residual value of assets procured through KERP (see paragraph 511 below).

1. Real property - US$11,313,419

(a) Basic repair contracts - US$766,046 116/

(b) Individual work orders - US$3,903,774

(c) Estimated cost for repairs not yet done - US$4,643,597

494. The Ministry of Health ("MoH") provides Kuwait's public health facilities. The Iraqi invading forces occupied its public service facilities. MoH seeks compensation for the resultant damage to and destruction of its headquarters in Kuwait City, six general care hospitals, nine specialized hospitals and 74 polyclinics. 117/ The main repairs undertaken were to electrical and water lines, automation systems and to other parts of MoH's buildings. 118/ Other repairs had not been carried out when the claim was submitted.

495. The Panel notes that, in relation to the repairs carried out to the Al Adan hospital, a substantial proportion of the total repair cost was incurred as consultants' charges. Having considered the nature of the repairs carried out to the hospital and the consultants' work, the Panel finds that use of consultants was unnecessary and that the claim is overstated to the extent of the amounts paid to the consultants. The Panel has therefore made an adjustment to the amount claimed to correct that overstatement.

496. The Panel finds that MoH made savings in maintenance expenditure from 2 August 1990 until resumption of maintenance services, which took place after replacement contracts were concluded in July 1993, and has made an adjustment in respect of such savings.

497. The Panel finds that further adjustments should be made for inadequate accounting for depreciation and insufficient evidence.

498. In light of the above, the Panel recommends compensation in the amount of US$2,119,000 out of the US$11,313,419 claimed.

2. Other tangible property - US$108,134,982

(a) Medicine - US$38,206,743 119/

499. MoH seeks compensation for loss of medicine from its central warehouse, and from the warehouse receiving area and the Kuwait Port. In addition, MoH claims for the losses occasioned when medicine in the warehouse, and which remained after liberation, passed its expiry date without being used. MOH submits its claim based on the price for each

relevant item shown on its pre-invasion computerised inventory system, which survived Iraq's invasion and occupation of Kuwait. 120/

500. In valuing the loss, the Panel has noted from the pre-invasion computerised inventories that the earliest dates upon which the relevant medicine expired fell in July 1991 and the expiry dates continued into 1992. The Panel accordingly finds that as the medicine expired after the occupation and emergency periods, its loss is not a direct result of Iraq's invasion and occupation of Kuwait and has made an adjustment to the amount claimed in this regard.

501. The Panel finds that a further adjustment should be made for insufficient evidence.

502. In light of the above, the Panel recommends compensation in the amount of US$31,191,000 out of the US$38,206,743 claimed.

(b) Medical equipment and instruments- US$18,193,258 121/

503. MoH seeks compensation for the loss of and damage to a variety of sophisticated medical equipment and instruments, including supplies and medical assets, and the cost of repairs to damaged equipment. 122/

504. The Panel finds that MoH made savings in maintenance expenditures from 2 August 1990 until repairs were effected to the damaged equipment, and has made an adjustment to the amount claimed in this regard.

505. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, overstatement and insufficient evidence.

506. In light of the above, the Panel recommends compensation in the amount of US$6,484,000 out of the US$18,193,258 claimed.

(c) Ambulances - US$597,623

507. MoH seeks compensation for the loss of 136 ambulances, some of which were replaced pursuant to KERP. The Panel finds that MoH underestimated the residual value of the replacement vehicles transferred pursuant to KERP and has therefore made an adjustment for incorrect valuation of KERP assets. The Panel finds that an adjustment should also be made for saved expenses.

508. In light of the above, the Panel recommends compensation in the amount of US$12,000 out of the US$597,623 claimed.

(d) Ordinary transportation vehicles - US$440,338 123/

509. MoH seeks compensation for the loss of a variety of vehicles comprising diesel road tankers, construction cranes, automobiles, light and heavy trucks and buses. The Panel notes that a number of replacement vehicles were purchased for MoH pursuant to KERP, that the costs of those vehicles are being claimed separately, 124/ and that MoH adjusted its claim to take account of its estimate of the residual value of those vehicles.

510. The Panel finds that an adjustment should be made for saved expenses.

511. In addition, the Panel finds that MoH underestimated the residual value of the replacement vehicles transferred pursuant to KERP. As a result, the compensation that the Panel recommends in respect of this loss (and before taking account of the vehicles provided pursuant to KERP) is reduced by the residual value, as adjusted by the Panel, of the vehicles so provided in the amount of US$217,600. The Panel recommends that this adjustment be applied to the claim for other tangible property.

(e) Boats - US$5,445,281 125/

512. MoH seeks compensation for loss of or damage to nine boats. The Panel finds that three boats were returned through UNMOP and is satisfied that the repair costs of such boats, and not their loss, has been claimed by MoH. 126/

513. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

514. In light of the above, the Panel recommends compensation in the amount of US$4,351,000 out of the US$5,445,281 claimed.

(f) Central stores - US$35,941,726

515. MoH seeks compensation for the loss of the contents of its central stores during Iraq's invasion and occupation of Kuwait. MoH valued its loss based upon the historic cost of each item lost by reference to a comparison made between a surviving pre-invasion inventory and a subsequent inventory carried out after liberation. The Panel notes that the pre-invasion inventory listed few of the items asserted to have been lost, and that supporting documentation was not produced. 127/

516. Accordingly, the Panel finds that an adjustment should be made for insufficient evidence.

517. In light of the above, the Panel recommends compensation in the amount of US$21,536,000 out of the US$35,941,726 claimed.

(q) Other equipment- US$5,906,316 128/

518. MoH seeks compensation for the loss of computers, and of communications, printing and electrical equipment.

519. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

520. In light of the above, the Panel recommends compensation in the amount of US$3,467,000 out of the US$5,906,316 claimed.

(h) Furniture, fixtures and office equipment - US$3,403,697

521. MoH seeks compensation for the loss of a variety of furniture, fixtures, and office equipment.

522. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

523. In light of the above, the Panel recommends compensation in the amount of US$2,037,900 out of the US$3,403,697 claimed.

3. Bank account and securities - US$28,422 129/

(a) Currency - US$28,422

524. MoH seeks compensation for the loss of petty cash from its various offices and facilities. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by MoH. The Panel finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US$13,000 out of the US$28,422 claimed.

4. Contract - US$4,319,609 130/

525. MoH seeks compensation for losses sustained due to the interruption of 14 contracts for construction, mechanical and electrical work, that were in existence on 2 August 1990. Such losses included the costs of site restoration and the additional cost of completing the contracts. In the

latter case, MoH asserts that the additional costs are to cover increased costs in the post-liberation period.

526. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs. The evidence shows that part only of the losses claimed in respect of thirteen of the fourteen contracts claimed for is attributable to these factors.

527. The Panel notes from the evidence submitted that the remaining contract was for the provision of labour for the operation and maintenance of MoH facilities at hospitals, health centres and other areas. The Panel finds that the price increase claimed is not compensable, as it was not attributable to any of the three factors set out at paragraph 63 of the First "F3" Report.

528. In light of the above, the Panel recommends compensation in the amount of US$619,000 out of the amount of US$4,319,609 claimed.

6. Public service expenditures - US$144,534,276

(a) Additional transportation costs - US$3,789,668

(b) Additional expenses of overseas treatment - US$136,856,934

(c) Additional labour costs - US$3,887,674

529. MoH claims that, prior to Iraq's invasion and occupation of Kuwait, the Government employed nearly 3,200 physicians (80 per cent of whom were non-Kuwaitis) and 10,000 nurses (90 per cent of whom were non-Kuwaitis). MoH asserts that Iraq's invasion and occupation of Kuwait resulted in a mass exodus of those employees, the majority of whom did not return after liberation. Upon investigation, the Panel accepts MoH's assertions. 131/

530. MoH claims that, as a result of the above, it incurred the following costs:

(a) additional transportation costs, being the costs of returning employees to Kuwait after liberation to enable them to resume work and the costs of bringing new employees to Kuwait to replace those employees who did not return after liberation;

(b) additional expenses of overseas treatment, being the costs incurred in the two years to 30 June 1993 in sending patients to other countries for medical treatment (in the absence of Iraq's invasion and

occupation of Kuwait, those patients would have been treated in Kuwait); and

(c) additional labour costs, being the increase in the salaries of cleaning, catering, laundry and technical services staff in the months immediately following liberation.

531. The Panel now turns to consider the compensability of each of these claims.

532. The Panel finds, in accordance with paragraphs 80 to 82 of the First "F3" Report, that the additional transportation costs are compensable, in so far as the amounts incurred are reasonable. However, the Panel also finds that MoH saved the costs of providing passages home to expatriate employees during the occupation and subsequent periods and that the costs so saved exceed the additional costs incurred. Accordingly, the Panel does not recommend any compensation for the additional transportation costs claimed.

533. The Panel also finds that the reasonable costs of additional overseas treatment are compensable, but has made an adjustment to reflect the fact that during the occupation period and up to 30 June 1991, MoH did not incur costs of providing treatment in Kuwait that it would have incurred absent Iraq's invasion and occupation of Kuwait. 132/

534. The Panel recommends that no compensation be awarded for the additional labour costs claimed because such increased costs were not attributable to any of the factors set out at paragraph 63 of the First "F3" Report.

535. In light of the above, the Panel recommends compensation in the amount of US$66,000,000 out of the US$144,534,276 claimed.

### 6. Payment or relief to others - US$153,862,756

#### (a) Relief paid to employees - US$153,862,756

536. MoH seeks compensation in the amount of US$153,862,756 for relief paid to employees.

537. The response of the Government to the Panel's questions regarding the Social Security Fund 133/ states that the amount claimed is based upon the employees' salaries before deduction of the social security contribution. The Panel accepts this statement and finds, in accordance with paragraph 41 of the First "F3" Report, that sums claimed in respect of social security

contributions are not compensable. The Panel has made an appropriate adjustment to the amount claimed in this regard.

538. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

539. In light of the above, the Panel recommends compensation in the amount of US$58,656,000 out of the US$153,862,756 claimed.

## P. Ministry of Planning

### Government Claim No. 37, UNCC Claim No. 5000165

Table 16. Summary Table for Ministry of Planning

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Other tangible property | | | |
| a) Computers and peripheral equipment tangible property loss | 20,389,861 | 7,679,000 | 540-543 |
| b) Office furniture equipment tangible property loss | 1,173,201 | 233,000 | 544-546 |
| Sub-total | 21,563,062 | 7,912,000 | |
| Payment or relief to others | | | |
| a) Temporary Bahrain office | 1,399,296 | 1,081,000 | 547-552 |
| b) Relief paid to employees | 8,386,168 | 3,354,000 | 553-556 |
| Sub-total | 9,785,464 | 4,435,000 | |
| Other losses | | | |
| a) Loss of information systems | 2,484,065 | 1,181,000 | 557-560 |
| b) Loss of field research data | 221,141 | 171,000 | 561 |
| Sub-total | 2,705,206 | 1,352,000 | |
| Total | 34,053,732 | 13,699,000 | |
| Interest | 5,411,400 | | |

#### 1. Other tangible property - US$21,563,062

##### (a) Computers and peripheral equipment tangible property loss - US$20,389,861 134/

540. The Ministry of Planning ("MoP") acts as information technology consultant to other Government Ministries and organizations and provides social and economic statistical information for Kuwait. MoP seeks compensation for the cost of temporary operations in Bahrain after liberation, and for a variety of lost assets, including mainframe computers, printers and other peripheral equipment, and the costs of restoring its computer room. 135/

541. The Panel notes that, although MoP states that it lost three mainframe computers, MoP claims the costs of purchasing two replacement mainframes. The Panel finds that the replacement mainframes have a superior capacity and functionality than those lost and therefore that an adjustment should be made for enhancement.

542. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

543. In light of the above, the Panel recommends compensation in the amount of US$7,679,000 out of the US$20,389,861 claimed.

(b) Office furniture equipment tangible property loss - US$1,173,201 136/

544. MoP claims compensation for the loss of a variety of office furniture and fixtures.

545. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

546. In light of the above, the Panel recommends compensation in the amount of US$233,000 out of the US$1,173,201 claimed.

2. Payment or relief to others - US$9,785,464

(a) Temporary Bahrain office - US$1,399,296

547. MoP asserts that it incurred a variety of expenses in establishing and operating an office in Bahrain from March 1991 to October 1991, while its own facilities in Kuwait were being restored. Such facilities were required to redevelop the computer systems for the payroll of all State employees, the personnel records for Government employees, the records for all Kuwaiti students and real estate records for the whole of Kuwait.

548. MoP seeks compensation for nine main categories of expenditure: communications fees, computer equipment, consultant services, employees' living allowances and bonuses, office and apartment rental, office equipment and supplies, petty cash, travel and transportation, and miscellaneous expenses.

549. Applying the principles set out at paragraph 79 of the First "F3" Report (repeated as paragraph 79 of the annex), the Panel, noting that the office was set up after liberation, finds that MoP's decision to establish and operate the office in Bahrain was reasonable in the circumstances, that the office was operated for a reasonable period, and therefore that the reasonable costs of so doing are compensable.

550. The Panel notes that, upon closure of the Bahrain office in October 1991, MoP scrapped computer and office equipment on the basis that such

equipment would have been incompatible with the new computer equipment installed at its restored facilities in Kuwait. The Panel finds that MOP did not take steps sufficient to mitigate its losses in that it failed to attempt to dispose of the scrapped equipment for value.

551. The Panel finds that adjustments should be made for inadequate accounting for residual value and insufficient evidence.

552. In light of the above, the Panel recommends compensation in the amount of US$1,081,000 out of the US$1,399,296 claimed.

(b) Relief paid to employees - US$8,386,168

553. MoP seeks compensation in the amount of US$8,386,168 for relief paid to employees.

554. The evidence shows that the amount claimed is based upon the employees' salaries after deduction of the social security contribution.

555. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

556. In light of the above, the Panel recommends compensation in the amount of US$3,354,000 out of the US$8,386,168 claimed.

3. Other losses - US$2,705,206

(a) Loss of information systems - US$2,484,065

557. MoP seeks compensation for lost information, being application systems which it asserts were being developed by its systems development department at the date of Iraq's invasion and occupation of Kuwait, the development of which was interrupted as a result of Iraq's invasion and occupation of Kuwait. The systems were being developed for the use of other Ministries, namely, the Directorate General of Civil Aviation, the General Administration of Customs, the Ministry of Electricity and Water and the Shuaiba Port Authority. Included in MoP's claim is the cost of modifying billing software required to implement a decision taken by the Ministry of Electricity and Water after liberation to forgive utility charges to customers until 14 February 1992. Some of the systems were able to be re-created or completed after liberation but others were lost. The claim is based on the salary costs of the personnel employed to work on the various projects over their duration.

558. The Panel finds that the lost information is compensable in accordance with the principles set out at paragraphs 23 to 28 above, save for the costs of developing the new billing software referred to above. The Panel finds that the decision to forgive electricity and water charges was not a direct result of Iraq's invasion and occupation of Kuwait.

559. The Panel finds that adjustments should be made for economies of re-creation and insufficient evidence.

560. In light of the above, the Panel recommends compensation in the amount of US$1,181,000 out of the US$2,484,065 claimed.

(b) Loss of field research data - US$221,141 137/

561. MoP also claims for lost field research data compiled manually by way of consumer questionnaires immediately before Iraq's invasion and occupation of Kuwait and destroyed by fire during Iraq's invasion and occupation of Kuwait. The claim is based on the salary costs of the personnel employed to work on the project for its duration. The Panel finds that the loss of the field research data is compensable in accordance with the principles set out at paragraphs 23 to 28 above, but that an adjustment should be made for insufficient evidence. The Panel therefore recommends compensation in the amount of US$171,000 out of the US$221,141 claimed.

## Q. Environment Protection Council

### Government Claim No. 38, UNCC Claim No. 5000166

Table 17. Summary Table for Environment Protection Council

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Other tangible property | | | |
| a) Stolen and damaged boats | 2,034,809 | 860,000 | 562-567 |
| b) Oil spill clean up equipment | 1,795,289 | 1,387,000 | 568-570 |
| c) Medical research equipment, computers and related peripherals | 71,575 | 58,000 | 571 |
| d) Marine biology research equipment and lost goods in transit | 173,566 | 111,000 | 572 |
| Sub-total | 4,075,239 | 2,416,000 | |
| Real property | 61,016 | 51,000 | 573 |
| Total | 4,136,255 | 2,467,000 | |
| Interest | 657,720 | | |

#### 1. Other tangible property - US$4,075,239

##### (a) Stolen and damaged boats - US$2,034,809 138/

562. The Environment Protection Council ("EPC") is responsible for the protection of the environment in Kuwait, whose membership comprises representatives of Ministries and other government organizations.

563. EPC seeks compensation for the loss of and damage to its fleet of pollution boats, which consisted of three work boats, two control boats and one surveillance boat. 139/

564. EPC claims that all six boats were lost or destroyed during Iraq's invasion and occupation of Kuwait. After liberation, the three work boats were recovered through UNROP and the surveillance boat was recovered from another source. EPC claims that the work boats were damaged beyond repair 140/ and the surveillance boat was damaged and its equipment removed but capable of repair.

565. The Panel finds that further adjustments should be made for overstatement, saved expenses and insufficient evidence.

566. The Panel finds that as a result of EPC's overstatement of the amount claimed (for which the Panel has made an adjustment in the preceding

paragraph), the deduction EPC applied in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to a lower initial cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

567. In light of the above, the Panel recommends compensation in the amount of US$860,000 out of the US$2,034,809 claimed.

(b) Oil spill clean up equipment - US$1,795,289

568. EPC seeks compensation for the loss of oil spill clean-up equipment, including oil barriers, oil scrapers and shore cleaning vehicles.

569. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

570. In light of the above, the Panel recommends compensation in the amount of US$1,387,000 out of the US$1,795,289 claimed.

(c) Medical research equipment, computers and related peripherals - US$71,575 141/

571. EPC seeks compensation for the loss of medical research equipment together with losses of computers and related peripherals. The Panel finds that adjustments should be made for saved expenses, enhancement, inadequate accounting for depreciation and insufficient evidence. In light of the above, the Panel recommends compensation in the amount of US$58,000 out of the US$71,575 claimed.

(d) Marine biology research equipment, lost goods in transit - US$173,566 142/

572. EPC seeks compensation for the loss of marine biology equipment and a gas chromatograph lost in transit. The Panel finds that, having paid for the goods in June 1990, EPC is the proper claimant for the chromatograph. 143/ The Panel finds that adjustments should be made for saved expenses and insufficient evidence. The Panel therefore recommends compensation in the amount of US$111,000 out of the US$173,566 claimed.

2. Real property - US$61,016 144/

573. The real property losses claimed by EPC are for damage to its nature reserves situated in the northern part of Kuwait at Jahra and Doha, comprising the costs of repairs to the reserves and the cost of a consultant nature conservationist. The Panel finds that the consultant was not required for the repairs, given the limited nature and extent of the

damage to the reserves, and has made an adjustment for the consequent overstatement to the amount claimed. The Panel also finds that adjustments should be made for inadequate accounting for depreciation and insufficient evidence, and accordingly recommends compensation in the amount of US$51,000 out of the US$61,016 claimed.

## R. Ministry of Communications

### Government Claim No. 45, UNCC Claim No. 5000173

Table 18. Summary Table for Ministry of Communications

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 38,959,208 | 20,018,000 | 574-583 |
| Other tangible property | | | |
| a) Switches | 40,265,195 | 25,527,000 | 584-588 |
| b) Other equipment | 24,221,209 | 16,504,000 | 589-592 |
| c) Stores inventories | 39,601,861 | 29,606,000 | 593-596 |
| d) Furniture and fixtures | 612,947 | 429,000 | 597-599 |
| e) Transportation department assets | 598,368 | 493,000 | 600-603 |
| Sub-total | 105,299,580 | 72,559,000 | |
| Contract | | | |
| a) Construction of extension of exchange and construction of new post offices | 112,866 | 55,000 | 604-608 |
| b) Buildings maintenance | 719,014 | 0 | 609-611 |
| Sub-total | 831,880 | 55,000 | |
| Payment or relief to others | | | |
| (a) Relief paid to employees | 84,548,260 | 31,283,000 | 612-616 |
| Total | 229,638,928 | 123,915,000 | |
| Interest | 36,710,520 | | |

### 1. Real property - US$38,959,208 145/

574. The Ministry of Communications ("MoC") is responsible for providing all telecommunication and postal services in Kuwait.

575. MoC seeks compensation for damage to its buildings, being exchanges and relay and receiving and transmission stations (of which six were destroyed) and for damage to its local and international transmission network. In a technical mission to Kuwait undertaken in November 1999, certain MoC facilities and equipment were inspected on behalf of the Panel.

576. MoC's claim for its building losses includes the cost of a damage assessment report regarding the South Subahiya exchange, one of Kuwait's main switching centres, and the subsequent cost of demolition of the site. The Panel notes that the report advised that the site did not require total demolition, but finds that the costs of partial demolition and repair would have exceeded those incurred in demolishing and rebuilding the site. It therefore finds that the costs of demolition and reconstruction are compensable. 146/

577. Amounts claimed in respect of other buildings have been calculated on the basis of standard construction costs per square metre. The Panel finds that this is a reasonable method of valuing the loss in the circumstances, but that such unit costs were overstated, and has made an adjustment to the amount claimed in this regard.

578. The Panel finds that further adjustments should be made for inadequate accounting for depreciation, inadequate accounting for residual value, saved expenses and insufficient evidence.

579. MoC's transmission network comprised cables and fibres, including coaxial cables, and microwave links. MoC seeks compensation for loss and damage to its coaxial cables and microwave links. 147/ Prior to Iraq's invasion and occupation of Kuwait, the network equipment was largely analogue. The Panel is satisfied that MoC was, prior to Iraq's invasion and occupation of Kuwait, committed to a programme of conversion from analogue to digital technology, and that MoC has continued this programme in the post-liberation period. 148/

580. MoC undertook its repair work to the coaxial cables in accordance with a repair and replacement strategy, pursuant to which it carried out repairs to the network where possible, but replaced parts of it where necessary. Most of the replacement parts purchased were digital parts. Having regard to the world-wide conversion to digital telecommunications, the Panel finds that the repair and replacement strategy was reasonable in the circumstances. 149/

581. As a result of the replacements and repairs to the network, MoC has operated a part analogue, part digital network in the post-liberation period. MoC's claim includes the costs of certain interface equipment 150/ required to enable a part analogue, part digital system to operate until the entire system is upgraded to operate using digital technology. The Panel finds that such equipment and its installation would have been required in any event. Accordingly, the Panel does not recommend any compensation for the costs of the interface equipment.

582. The Panel finds that adjustments should be made for inadequate accounting for depreciation and for insufficient evidence.

583. In light of the above, the Panel recommends compensation in the amount of US$20,018,000 out of the US$38,959,208 claimed.

2. Other tangible property - US$105,299,580

(a) Switches - US$40,265,195

584. MoC seeks compensation for losses of switches, which are items of equipment used to route and connect communications. The items lost included local switches, an international exchange, a mobile exchange, public automatic branch exchanges, remote switching units and remote control equipment ("RSU/RCE equipment") and packet switches. MoC also seeks compensation for switch repairs.

585. The Panel notes that MoC replaced more switches than were destroyed and adjusted the amount claimed so as to exclude purchases made to replace switches that were not destroyed as a result of Iraq's invasion and occupation of Kuwait. The Panel finds that MoC's adjustment understated the cost of the purchases to be deducted and has made an adjustment for overstatement in this regard. The Panel notes that, although many of the switches destroyed were analogue switches, all replacements purchased were digital switches. The Panel finds that the purchase of digital switches was reasonable in the circumstances, but that MoC overestimated the useful life of the destroyed switches given the conversion from analogue to digital technology. It has therefore made an adjustment to the amount claimed for inadequate accounting for depreciation.

586. The Panel finds that the amounts claimed in respect of the mobile exchange and the RSU/RCE equipment overstate the measure of inflation to be applied so as to derive the replacement cost claimed and has made a further adjustment in this regard.

587. The Panel finds that further adjustments should be made for saved expenses and for insufficient evidence.

588. In light of the above, the Panel recommends compensation in the amount of US$25,527,000 out of the US$40,265,195 claimed.

(b) Other equipment - US$24,221,209 151/

589. MoC seeks compensation for losses of other equipment, which include technical services equipment, a coastal station, maintenance equipment for the international network, international telephone booths, a computer system, a frequency and wireless control system, and videotext and facsimile machines.

590. The Panel finds that, in its claim for the computer system, MoC overestimated some of the useful lives of the equipment lost, and has made an adjustment for inadequate accounting for depreciation to take account of

the overestimate, and further adjustments for enhancement, saved expenses and insufficient evidence.

591. For the remaining equipment, the Panel finds that adjustments should be made for overstatement, enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

592. In light of the above, the Panel recommends compensation in the amount of US$16,504,000 out of the US$24,221,209 claimed.

(c) Stores inventories - US$39,601,861 152/

593. MoC seeks compensation for loss of its stores inventories, which comprise spare parts and other technical equipment for use in repairs, system back-ups or maintenance, and furniture and office equipment, stored in its warehouses. MoC based its claim on its 1989 records, updated using the estimates of MoC personnel, its later records having been destroyed, with deductions for the estimated percentage of the stores that remained after liberation.

594. MoC's main warehouse was visited in November 1999 on the Panel's behalf, in order to inspect the damaged stock that remained after liberation.

595. The Panel finds that adjustments should be made for overstatement, inadequate accounting for depreciation and insufficient evidence.

596. In light of the above, the Panel recommends compensation in the amount of US$29,606,000 out of the US$39,601,861 claimed.

(d) Furniture and fixtures - US$612,947 153/

597. MoC seeks compensation for lost furniture and fixtures, basing its claim on the total purchases of furniture and fixtures from liberation until 30 June 1993. 154/

598. The Panel finds that an adjustment should be made for insufficient evidence.

599. In light of the above, the Panel recommends compensation in the amount to US$429,000 out of the US$612,947 claimed.

(e) Transportation department assets - US$598,368

600. In addition to the main activities set out in paragraph 574 above, MoC's transportation department supplies MoC with vehicles and regulates the navigation of shipping traffic.

601. MoC seeks compensation for loss of, and damage to, the transportation department's assets, being navigational aids, and for the cost of clearing underwater debris. 155/

602. The Panel finds that an adjustment should be made for insufficient evidence.

603. In light of the above, the Panel recommends compensation in the amount of US$493,000 out of the US$598,368 claimed.

3. Contract - US$831,880 156/

(a) Construction of extension of exchange and construction of new post offices - US$112,866

604. MoC seeks compensation for the losses sustained due to the interruption of two projects, including the costs of site restoration and the additional costs of completing one of the projects.

605. After liberation, MoC negotiated a contract to complete the first project with a new contractor, as the original contractor's completion price was considered too expensive.

606. The Panel, continuing in its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph, namely, site restoration costs, additional transportation costs and additional insurance costs.. The evidence shows that part only of the amount claimed is so attributable.

607. The second project was abandoned after liberation. MoC valued its loss as 10 per cent of the original contract price, being its estimate of the value of the work at the date of Iraq's invasion and occupation of Kuwait. The Panel finds that the decision to abandon the project was not a direct result of Iraq's invasion and occupation of Kuwait 157/ and accordingly recommends compensation for the cost of repairing the damage that was a direct result of Iraq's invasion and occupation of Kuwait. 158/ (see paragraph 39 above). Any other loss arises from MoC's independent decision to abandon the project.

608. In light of the above, the Panel recommends compensation in the amount of US$55,000 out of the US$112,866 claimed.

(b) Buildings maintenance - US$719,014

609. MoC claims that, prior to Iraq's invasion and occupation of Kuwait, it routinely entered into contracts to clean and maintain MoC buildings, including various exchanges and stations. In January and October of 1992, respectively, MoC entered into two contracts at a price that it claims was much higher than it had paid for equivalent pre-invasion maintenance contracts, due to the severe damage to MoC's buildings occasioned during Iraq's invasion and occupation of Kuwait.

610. The Panel finds that MoC will have made savings in maintenance expenditure which exceed the amount referable to the three factors set out at paragraph 63 of the First "F3" Report.

611. Accordingly, the Panel does not recommend any compensation in respect of this claim.

4. Payment or relief to others - US$84,548,260

(a) Relief paid to employees - US$84,548,260

612. MoC seeks compensation in the amount of US$84,548,260 for relief paid to employees.

613. The response of the Government to the Panel's questions regarding the Social Security Fund 159/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

614. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

615. The Panel also finds that an adjustment should be made for insufficient evidence.

616. In light of the above, the Panel recommends compensation in the amount of US$31,283,000 out of the US$84,548,260 claimed.

## S. Public Authority for Applied Education and Training

Government Claim No. 46, UNCC Claim No. 5000175

Table 19. Summary Table for Public Authority for Applied Education and Training

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | | | |
| a) Construction administration contract | 4,706,875 | 3,295,000 | 617-620 |
| b) Service contracts | 30,061,834 | 19,315,000 | 621-625 |
| c) Maintenance contracts | 368,242 | 241,000 | 626-628 |
| d) Repair estimates | 1,010,023 | 628,000 | 629-632 |
| Sub-total | 36,146,974 | 23,479,000 | |
| Contract | 111,699 | 19,000 | 633-634 |
| Other tangible property | 55,579,725 | 31,848,000 | 635-638 |
| Public service expenditures | | | |
| a) Cost of recruiting new staff | 38,725 | 15,000 | 639 |
| b) Crash course | 225,660 | 124,000 | 640-643 |
| Sub-total | 264,385 | 139,000 | |
| Business transaction or course of dealing | 1,990,031 | 0 | 644-649 |
| Bank accounts and securities | 32,613 | 18,000 | 650 |
| Payment or relief to others | | | |
| a) Relief paid to employees | 26,013,674 | 10,406,000 | 651-654 |
| b) Three months post liberation bonuses | 578,326 | 578,326 | 655-657 |
| Sub-total | 26,592,000 | 10,984,326 | |
| Evacuation costs (of citizens or other nationals) | 59,437 | 32,000 | 658 |
| Total | 120,776,864 | 66,519,326 | |
| Interest | 19,193,360 | | |

### 1. Real property - US$36,146,974

#### (a) Construction administration contract - US$4,706,875

617. The Public Authority for Applied Education and Training ("PAAET") provides technical applied education and training in Kuwait. It seeks compensation for damage to, and losses from, its facilities and buildings.

618. In June 1991, PAAET engaged a contractor to supervise and manage the repairs to its colleges and training centres. The Panel finds that the reasonable costs of so doing are compensable, in that such work was an

integral part of the required repairs and could not have been performed by PAAET's existing engineering staff.

619. The Panel finds that, although the contractor was not chosen using normal competitive procurement procedures, the cost incurred was reasonable and would not have been reduced had competitive procurement procedures been adopted. However, the Panel finds that an adjustment should be made for insufficient evidence.

620. In light of the above, the Panel recommends compensation in the amount of US$3,295,000 out of the US$4,706,875 claimed.

(b) Service contracts - US$30,061,834

621. During June and July of 1991, the contractor referred to at paragraph 618 above negotiated, on behalf of PAAET, five contracts for the repair of damaged colleges and training centres.

622. The Panel finds that, although these contracts were not awarded pursuant to competitive procurement procedures, the costs incurred were reasonable and would not have been reduced if competitive procurement procedures had been adopted.

623. PAAET's claim does not make any allowance for depreciation. The Panel finds, however, that an adjustment should be made for inadequate accounting for depreciation in relation to repairs to decorative and electrical items because those repairs resulted in an increase in the useful life of those items. 160/

624. The Panel also finds that adjustments should be made for saved expenses and insufficient evidence.

625. In light of the above, the Panel recommends compensation in the amount of US$19,315,000 out of the US$30,061,834 claimed.

(c) Maintenance contracts - US$368,242

626. In March 1992 and January 1993, PAAET signed two contracts for repair and regular maintenance work at its colleges and training centres. PAAET claims that portion of the cost of the contracts referable to repairing some of the damage not covered by the contracts discussed at paragraphs 621 to 625 above.

627. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

628. In light of the above, the Panel recommends compensation in the amount of US$241,000 out of the US$368,242 claimed.

(d) Repair estimates - US$1,010,023

629. PAAET claims the estimated cost of repairs to three facilities that had not been commenced at the time it submitted its claim.

630. The Panel finds that repairs to one of the facilities are now complete and that PAAET intends eventually to repair the other two facilities. In accordance with paragraph 21 above, the Panel finds the losses compensable.

631. The Panel also finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

632. In light of the above, the Panel recommends compensation in the amount of US$628,000 out of the US$1,010,023 claimed.

2. Contract - US$111,699 161/

633. PAAET asserts that a contract for the construction of lecture halls was interrupted by Iraq's invasion and occupation of Kuwait.

634. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex), finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph and has calculated the amount of the loss claimed that is so attributable. The Panel recommends compensation in the amount of US$19,000 out of the US$111,699 claimed.

3. Other tangible property - US$55,579,725 162/

635. PAAET seeks compensation for the loss of, or damage to, all of its furniture, office equipment, scientific equipment, kitchen supplies, library materials and other tangible property from its classrooms, laboratories, workshops and other facilities. PAAET was able only to estimate its losses because of the destruction of many of its pre-invasion documents. The Panel has therefore made an adjustment for insufficient evidence.

636. PAAET valued its loss by reference to the book value of its inventory of tangible property as at 30 June 1990, as summarised in a listing which survived Iraq's invasion and occupation of Kuwait. To this value it applied two inflation factors (one for the period from the initial purchase of the items until 2 August 1990 and one for the period from liberation until replacement) and a depreciation factor (to reflect that the tangible

property was not new at the time of Iraq's invasion and occupation of Kuwait). While the Panel agrees with this method of valuation, it has made adjustments to reflect an overstatement by PAAET in the inflation factor for the period from liberation until replacement and to reflect that the depreciation factor was understated for each type of tangible property lost.

637. The Panel finds that an adjustment should also be made for saved expenses.

638. In light of the above, the Panel recommends compensation in the amount of US$31,848,000 out of the US$55,579,725 claimed.

4. Public service expenditures - US$264,385 163/

(a) Cost of recruiting new staff - US$38,725

639. PAAET asserts that it incurred a variety of expenses in locating and attracting teachers and professors to replace 275 of its employees who left Kuwait as a result of Iraq's invasion and occupation of Kuwait and did not return. The Panel finds that the cost of replacing only some of these employees is compensable 164/ and that an adjustment should be made for insufficient evidence. Accordingly, the Panel recommends compensation in the amount of US$15,000 out of the US$38,725 claimed.

(b) Crash course - US$225,660

640. PAAET claims the costs of providing a course to allow its students to undertake the studies that, in the absence of Iraq's invasion and occupation of Kuwait, would have been undertaken in the academic year 1991/92. 165/

641. The Panel finds that the loss of the 1990/91 academic year was a direct result of Iraq's invasion and occupation of Kuwait and therefore recommends that compensation be awarded for that portion of the costs of the course that are above and beyond those that would have been incurred in the absence of Iraq's invasion and occupation of Kuwait (for example, on standard summer courses).

642. The Panel finds that an adjustment should be made for insufficient evidence.

643. Accordingly, the Panel recommends compensation in the amount of US$124,000 out of the US$225,660 claimed.

5. Business transaction or course of dealing - US$1,990,031

(a) Revenue loss - US$1,990,031

644. Prior to Iraq's invasion and occupation of Kuwait, PAAET earned revenue from renting housing to its employees, selling food to its employees and students, charging fees for tuition and registration, and providing training programmes to Government departments and private companies. PAAET claims the loss in this revenue for the period 2 August 1990 to 30 June 1993, calculated as the difference between its estimate of the revenue that would have been earned in the absence of Iraq's invasion and occupation of Kuwait and the revenue in fact earned.

645. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 166/

646. The Panel finds that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until 30 June 1993, except for the revenue from renting housing to employees, which was only so affected until 30 June 1992. 167/ The Panel has made the appropriate adjustment.

647. The Panel has also made an adjustment to reflect that portion of PAAET's revenue which would have been derived from other Government departments.

648. Finally, the Panel sought information from PAAET as to the costs involved in the generation of its revenue. This disclosed that the expenses that would have been incurred in earning the lost revenue for the relevant periods exceeded that lost revenue.

649. Accordingly, the Panel does not recommend any compensation for this loss type.

6. Bank accounts and securities - US$32,613

(a) Loss of petty cash - US$32,613 168/

650. PAAET seeks compensation for the loss of cash from its various offices and facilities. Applying the principles set out at paragraph 406 of the First "F3" Report, the Panel finds the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held by PAAET. The Panel finds that an adjustment should be made for insufficient evidence. Accordingly, the Panel

recommends compensation in the amount of US$18,000 out of the US$32,613 claimed.

7. Payment or relief to others - US$26,592,000

(a) Relief paid to employees - US$26,013,674

651. PAAET seeks compensation in the amount of US$26,013,674 for relief paid to employees.

652. The response of the Government to the Panel's questions regarding the Social Security Fund 169/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

653. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof, the Panel accepts the compensability of such relief paid to employees.

654. In light of the above, the Panel recommends compensation in the amount of US$10,406,000 out of the US$26,013,674 claimed.

(b) Three months post liberation bonuses - US$578,326

655. PAAET seeks compensation for payments made to its employees for work undertaken during the emergency period in cleaning and preparing PAAET's facilities for the start of the academic year in September 1991. Shortly after liberation, PAAET contacted the employees and promised them the payments in order to induce them to undertake the cleaning and preparation work.

656. The Panel finds that the existence of a promise to pay before the work was undertaken, together with the fact that the work was required as a direct result of Iraq's invasion and occupation of Kuwait, differentiates this claim from that discussed at paragraph 363 above and therefore recommends that compensation be awarded for the payments. The Panel also finds that the amount paid was reasonable and that there is no duplication between the work performed by the employees who received the bonus payments and the work in relation to the real and other tangible property losses discussed above.

657. PAAET provided evidence that it had, in fact, paid more than it had claimed for the bonus payments. However, the Panel cannot recommend the award of more than the sum claimed and therefore recommends payment in full in the amount of US$578,326.

8. Evacuation costs (of citizens or other nationals) - US$59,437

(a) Costs of repatriation of staff - US$59,437 170/

658. PAAET seeks compensation for the cost of bringing 192 of its teachers and instructors back to Kuwait after liberation. The Panel finds, as set out at paragraph 81 of the First "F3" Report, that such costs are compensable. The Panel finds that adjustments should be made for insufficient evidence. 171/ In light of the above, the Panel recommends compensation of US$32,000 out of the US$59,437 claimed.

## T. Public Authority for Agriculture Affairs and Fish Resources

### Government Claim No. 55, UNCC Claim No. 5000187

Table 20. Summary Table for Public Authority for Agriculture Affairs and Fish Resources

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 24,508,382 | 8,596,000 | 659-665 |
| Public service expenditures | | | |
| a) Chicken vaccine | 1,672,576 | 1,672,576 | 666-671 |
| Other tangible property | | | |
| a) Pure Arabian horses and Zoo animals | 2,865,697 | 1,417,000 | 672-677 |
| b) Medical instruments and equipment | 396,917 | 230,000 | 678 |
| c) Medicine and animal feed | 1,103,857 | 520,000 | 679-681 |
| d) Vehicles and heavy equipment | 2,703,615 | 2,215,000 | 682-684 |
| e) Office furniture and equipment | 1,078,262 | 703,000 | 685-687 |
| f) Inventory in store | 693,160 | 584,000 | 688-690 |
| Sub-total | 8,841,508 | 5,669,000 | |
| Payment or relief to others | | | |
| a) Relief paid to employees | 8,917,081 | 3,325,000 | 691-695 |
| Other losses | 2,163,838 | 29,000 | 696-699 |
| Business transaction or course of dealing | | | |
| a) Zoo entry and quarantine fees | 436,859 | 0 | 700-703 |
| Contract | | | |
| a) Forestation and preservation areas contract loss | 381,639 | 363,000 | 704-706 |
| Total | 46,921,883 | 19,654,576 | |
| Interest | 7,456,480 | | |

1. Real property - US$24,508,382

(a) Landscape areas property loss - US$8,342,211

(b) Gardens real property loss - US$2,861,290

(c) Buildings and reservoirs real property loss - US$5,744,596 172/

(d) Forestation and Foliage preservation areas real property loss - US$7,560,285 173/

659. The Public Authority for Agriculture and Fish Resources ("PAAF") is responsible for administering programmes and regulations relating both to plants and live animals in Kuwait, including landscaping of public areas, forestation projects and animal health, and regulates the importation of live animals and plants into Kuwait.

660. The real property losses of PAAF comprise damage to PAAF's buildings (of which one, the finance department, was totally destroyed) and other facilities. Such facilities comprised irrigation reservoirs, forestation and foliage preservation areas (including plants), facilities of the Kuwait Zoological Gardens Department (the "Zoo") and Kuwait's roadside landscaping and public gardens, including 11 public gardens that were under construction at the date of Iraq's invasion and occupation of Kuwait.

661. In addition, PAAF claims the costs incurred in retaining external consultants to perform damage assessments for nine of the eleven gardens that were under construction when damaged.

662. As to those parts of the claim in respect of landscape areas and gardens, PAAF based its claim on the estimated cost of repairing and replacing lost and damaged plants and seedlings. The Panel finds that repair and replacement were carried out as part of general maintenance contracts, and finds that it is not possible to ascertain from those contracts the amount pertaining to the repairs and replacements. Accordingly, the Panel has considered the claim on the basis of the estimates initially submitted. The Panel notes that the estimates allow for maintenance and husbandry of the new plants and seedlings for a five year period. The Panel finds that such maintenance and husbandry is necessary to enable the plants and seedlings to become established, but for a period of one year only. PAAF would have been required to undertake regular replanting of its landscape areas and gardens, and to carry out regular care and maintenance, in any event, and the Panel has made an adjustment for overstatement in this regard.

663. The Panel is satisfied that it is a generally accepted horticultural practice periodically to regenerate and restock trees, plants and shrubs under a managed programme so as to maintain a sustainable environment. The Panel therefore finds that the forestation and foliage preservation areas

concerned would have required regeneration and restocking every four years. The Panel also finds that repairs to certain buildings would have extended their useful life and that the estimates of useful life for some buildings should be adjusted. As a result, the Panel finds that adjustments should be made for inadequate accounting for depreciation.

664. The Panel also finds that further adjustments should be made for overstatement, saved expenses and insufficient evidence.

665. In light of the above, the Panel recommends compensation in the amount of US$8,596,000 out of the US$24,508,382 claimed.

2. Public service expenditures - US$1,672,576

(a) Chicken vaccine - US$1,672,576

666. PAAF claims for the costs incurred from June 1992 to June 1997 in a programme undertaken by PAAF, the aim of which was to eradicate Gumboro disease from Kuwait's poultry stock. Under the programme, chickens imported into and bred within Kuwait were vaccinated against Gumboro disease. The Panel notes that although PAAF asserts that Gumboro disease was not totally eradicated from its poultry stock as at the date of submission of its claim, the claim is limited to costs incurred to June 1997.

667. Gumboro disease is a highly contagious disease that affects the immunity of chickens, and results in retarded growth and eventual death in approximately 40 per cent of cases. PAAF claims that, prior to Iraq's invasion and occupation of Kuwait, the poultry stock in Kuwait was kept free of Gumboro disease as a result of Government regulations, which prevented the importation of live chickens greater than one day old and permitted imports only from countries known to be free of the disease.

668. PAAF claims that, during the occupation period, and for nine months after liberation, it was unable to enforce the above regulations and that during the occupation period Iraq imported chickens into Kuwait. After liberation, Kuwait imported live chickens from sources other than in accordance with the above regulations, in order to alleviate food shortages. The Panel finds that the Government's actions were to be expected in the circumstances.

669. By Procedural Order 38 issued in January 2000, the Panel sought information, inter alia, regarding the pre-invasion incidence of Gumboro disease in Kuwait. The Panel accepts that there was no proven incidence of Gumboro disease in Kuwait prior to Iraq's invasion and occupation.

670. The Panel therefore finds that the introduction of Gumboro disease occurred as a direct result of Iraq's invasion and occupation of Kuwait, and the reasonable costs of eradication of the disease are accordingly compensable. The Panel further finds that the duration of the programme was reasonable.

671. In light of the above, the Panel recommends payment in full of the US$1,672,576 claimed.

### 3. Other tangible property - US$8,841,508

#### (a) Pure Arabian horses and Zoo animals - US$2,865,697

672. PAAF seeks compensation for the loss of 30 pure Arabian horses, 191 Zoo animal exhibits, and assorted birds and reptiles.

673. PAAF valued its loss on the basis of estimated replacement cost. The Panel notes that 10 horses were pregnant when lost and that PAAF valued each unborn foal at a value equal to an adult horse. The Panel finds that the claim is overstated in that it fails to take into account the statistical rate of failure of pregnancy and in that the market value of a foal is generally lower than that of an adult horse. The Panel has therefore made an adjustment for overstatement.

674. In addition, the Panel notes that 72 animals were received in the post-liberation period as donations from governments and private individuals. The Panel finds that these animals replaced some of the lost animals at no expense to Kuwait and a consequent adjustment should be made to the amount claimed for the animals lost.

675. The Panel further finds that PAAF made savings in operating expenditure until the Zoo was reopened in 1993 , and for a period of 12 months as regards the Arabian horses, and has therefore made an adjustment for saved expenses. 174/

676. The Panel finds that adjustments should also be made for insufficient evidence.

677. In light of the above, the Panel recommends compensation in the amount of US$1,417,000 out of the US$2,865,697 claimed.

(b) Medical instruments and equipment - US$396,917 175/

678. PAAF seeks compensation for the loss of a variety of medical instruments and equipment, including incubators, microscopes, refrigerators, freezers, an X-ray machine and other veterinary, medical and surgical equipment. The Panel finds that an adjustment should be made for inadequate accounting for depreciation. In light of the above, the Panel recommends compensation in the amount of US$230,000 out of the US$396,917 claimed.

(c) Medicine and animal feed - US$1,103,857 176/

679. PAAF seeks compensation for the loss of medicine and animal feed.

680. The Panel finds that adjustments should be made for saved expenses (since re-stocking of lost animals did not commence until 1991) and insufficient evidence.

681. In light of the above, the Panel recommends compensation in the amount of US$520,000 out of the US$1,103,857 claimed.

(d) Vehicles and heavy equipment - US$2,703,615 177/

682. PAAF seeks compensation for vehicles and heavy equipment that it claims were lost, damaged or destroyed. After liberation, 38 vehicles and pieces of heavy equipment were found, and of them, 12 were damaged beyond repair.

683. The Panel finds that adjustments should be made for saved expenses and insufficient evidence.

684. In light of the above, the Panel recommends compensation in the amount of US$2,215,000 out of the US$2,703,615 claimed.

(e) Office furniture and equipment - US$1,078,262 178/

685. PAAF seeks compensation for the loss of a variety of office furniture and equipment, including desks, chairs, shelves, audiovisual equipment, microfilm equipment and personal computers.

686. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses, enhancement and insufficient evidence.

687. In light of the above, the Panel recommends compensation in the amount of US$703,000 out of the US$1,078,262 claimed.

(f) Inventory in store - US$693,160

688. PAAF seeks compensation for the loss of a variety of inventory in store, including office supplies, spare parts, agricultural chemicals and small tools.

689. The Panel finds that adjustments should be made for overstatement and insufficient evidence.

690. In light of the above, the Panel recommends compensation in the amount of US$584,000 out of the US$693,160 claimed.

4. Payment or relief to others - US$8,917,081

(a) Relief paid to employees - US$8,917,081

691. PAAF seeks compensation in the amount of US$8,917,081 for relief paid to employees.

692. The response of the Government to the Panel's questions regarding the Social Security Fund 179/ states that the amount claimed is based upon the employees' salaries after deduction of the social security contribution. The Panel accepts this statement.

693. As set out at paragraph 36 of the First "F3" Report, and subject to the percentage adjustment set out at paragraph 48 thereof (repeated as paragraphs 36 and 48 of the annex, respectively), the Panel accepts the compensability of such relief paid to employees.

694. The Panel finds that the relief claimed exceeds the amount paid by PAAF to its employees for salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods and has made an adjustment for overstatement in this regard.

695. In light of the above, the Panel recommends compensation in the amount of US$3,325,000 out of the US$8,917,081 claimed.

5. Other losses - US$2,163,838

(a) Research studies - US$119,016

(b) Study for new Zoo - US$2,044,822

696. PAAF seeks compensation for the loss of two research studies completed prior to Iraq's invasion and occupation of Kuwait, based on the salaries paid to the staff who carried out the research.

697. As set out at paragraphs 23 to 28 above, the Panel recommends that compensation be awarded for the loss of the two research studies. However, adjustments should be made for economies of re-creation and insufficient evidence.

698. PAAF also seeks compensation for costs incurred in commissioning a study for the building of a new Zoo. The proposed site could not be used for the Zoo after liberation as the area was redesignated by the Government for oil development. The Panel finds that the decision taken to redesignate the proposed site for the new Zoo to oil development was not a direct result of Iraq's invasion and occupation of Kuwait and accordingly does not recommend any compensation for the loss of that study.

699. In light of the above, the Panel recommends compensation in the amount of US$29,000 out of the US$2,163,838 claimed.

6. Business transaction or course of dealing - US$436,859

(a) Zoo entry and quarantine fees - US$436,859 180/

700. Prior to Iraq's invasion and occupation of Kuwait, PAAF generated revenue from Zoo entry admissions and quarantine fees. PAAF claims that between 2 August 1990 and February 1993, the Zoo was closed for repairs and the restocking of animals and that it therefore lost revenue derived from entry admissions until June 1993. In addition, PAAF claims that it lost quarantine fees between 2 August 1990 and July 1991. PAAF valued both elements of this loss based on the estimated revenue it would have earned for the above period, measured by reference to the revenue earned prior to Iraq's invasion and occupation of Kuwait, less any revenue earned over the period claimed.

701. The Panel finds that the loss of revenue is compensable for the period that the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait, subject to deductions for exceptional post-liberation revenue, for revenue that would have been paid by other Government departments and for saved expenses. 181/ The Panel finds that

the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait until July 1991 in the case of quarantine fees and to June 1993 in the case of admission fees.

702. The Panel sought information from PAAF as to the costs involved in the generation of its revenue. This disclosed that the expenses that would have been incurred in earning the lost revenue for the relevant periods exceeded that lost revenue.

703. In light of the above, the Panel does not recommend any compensation for the loss of revenue claimed.

## 7. Contract - US$381,639 182/

### (a) Forestation and preservation areas contract loss - US$381,639

704. After liberation PAAF entered into a contract with a pre-invasion contractor to repair and complete construction of the central nursery. PAAF valued its loss as the difference between the cost PAAF incurred to complete the project and the amount it would have paid under the original contract.

705. The Panel, continuing its approach set out at paragraph 63 of the First "F3" Report, finds that the losses claimed are compensable in so far as they are attributable to the factors set out in that paragraph. The evidence shows that part only of the losses claimed is attributable to the relevant factors.

706. In light of the above, the Panel recommends compensation in the amount of US$363,000 out of the US$381,639 claimed.

## U. Ministry of Interior

### Government Claim No. 57, UNCC Claim No. 5000189

Table 21. Summary Table for Ministry of Interior

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 24,518,148 | 18,552,000 | 707-710 |
| Other tangible property | | | |
| a) Coast Guard boats | 35,721,844 | 17,609,000 | 711-715 |
| b) Communications equipment | 29,925,915 | 21,742,000 | 716-718 |
| c) Criminal evidence equipment | 6,061,148 | 4,202,000 | 719-721 |
| d) Computer equipment | 4,946,813 | 1,614,000 | 722-727 |
| e) Traffic department equipment and supplies | 1,791,622 | 1,241,000 | 728-730 |
| f) Office furniture and equipment | 9,372,748 | 6,715,000 | 731-733 |
| g) Warehouse equipment and supplies | 39,649,782 | 26,484,000 | 734-736 |
| Sub-total | 127,469,872 | 79,607,000 | |
| Bank accounts and securities | 1,701,496 | 1,282,000 | 737-740 |
| Public service expenditures | 828,819 | 610,000 | 741-744 |
| Total | 154,518,335 | 100,051,000 | |
| Interest | 24,556,040 | | |

### 1. Real property - US$24,518,148 183/

707. The Ministry of Interior ("MoI") is responsible for policing and law enforcement, including border and immigration controls and Kuwait's Coast Guard, and for the operation of Kuwait's prison system. MoI seeks compensation for real property losses relating to approximately 200 buildings that it claims were damaged or destroyed, and for damage arising due to a lack of maintenance of MoI's buildings during the occupation period.

708. MoI claims the costs incurred in effecting temporary and limited permanent repairs and the costs to be incurred in further replacement and repairs. 184/ The Panel finds that, although nine of the 11 contracts for repair were not awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs.

709. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

710. In light of the above, the Panel recommends compensation in the amount of US$18,552,000 out of the US$24,518,148 claimed.

2. Other tangible property - US$127,469,872

(a) Coast Guard boats - US$35,721,844 185/

711. MoI seeks compensation for 48 Coast Guard boats that it claims were lost, damaged or destroyed, including landing craft, border control craft, rescue boats and speed boats. MoI asserts that 28 boats were damaged and that 20 boats were lost, destroyed or damaged beyond repair. 186/ In addition, MoI claims compensation for lost spare parts.

712. In relation to those boats MoI asserts were damaged beyond repair, the Panel notes that MoI has not adjusted its claim to take account of the residual value of the equipment contained on the boats. The Panel finds that such account is warranted and has therefore made an adjustment in this regard.

713. The Panel notes that a further 17 speedboats were purchased for MoI pursuant to KERP, that the cost of those speedboats is being claimed separately, 187/ and that MoI adjusted its claim to take account of its estimate of their residual value. The Panel finds that MoI underestimated the residual value of those boats and therefore that an adjustment should be made for incorrect valuation of KERP assets.

714. The Panel finds that further adjustments should be made for saved expenses, overstatement and insufficient evidence.

715. In light of the above, the Panel recommends compensation in the amount of US$17,609,000 out of the US$35,721,844 claimed.

(b) Communications equipment US$29,925,915 188/

716. MoI seeks compensation for the loss of communications equipment, including cables, spare parts and inspection equipment. 189/

717. The Panel finds that adjustments should be made for enhancement, inadequate accounting for depreciation, saved expenses and insufficient evidence.

718. In light of the above, the Panel recommends compensation in the amount of US$21,742,000 out of the US$29,925,915 claimed.

(c) Criminal evidence equipment - US$6,061,148

719. MoI seeks compensation for the loss of criminal evidence equipment, including scientific analysis equipment, desalination equipment and X-ray equipment.

720. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

721. In light of the above, the Panel recommends compensation in the amount of US$4,202,000 out of the US$6,061,148 claimed.

(d) Computer equipment - US$4,946,813 190/

722. MoI seeks compensation for computer equipment losses, comprising mainframe computers and computer peripherals. 191/

723. After liberation, MoI decided to centralise its pre-invasion computer system, using two mainframe computers, one (an IBM ES/9000-480) purchased pursuant to KERP, instead of six mainframe computers used prior to Iraq's invasion and occupation of Kuwait. The Panel finds that MoI's decision to centralise its computer system was not a direct result of Iraq's invasion and occupation of Kuwait, and therefore that the costs of retaining consultants under three contracts to implement the decision are not compensable.

724. MoI also seeks compensation for 10 per cent of the purchase price of a mainframe computer, purchased in Saudi Arabia during the occupation period as MoI believed that installation of the IBM ES/9000-480 it was to receive pursuant to KERP could have been delayed. 192/ MoI found upon its return to Kuwait that the computer it purchased was not required and it was neither installed nor used. The Panel finds that the purchase of the mainframe computer was not a direct result of Iraq's invasion and occupation of Kuwait and therefore does not recommend any compensation in relation to it.

725. The Panel finds that the remaining costs incurred are compensable, but that adjustments should be made for enhancement, saved expenses and insufficient evidence.

726. As a result of the adjustment made in respect of enhancement by the Panel in the preceding paragraph, the Panel finds that the deduction MoI applied against the amount claimed in respect of depreciation exceeds the deduction warranted, in that the percentage deduction should be applied to

a lower base cost. The Panel has therefore re-calculated the deduction to be applied for depreciation.

727. In light of the above, the Panel recommends compensation in the amount of US$1,614,000 out of the US$4,946,813 claimed.

(e) Traffic department equipment and supplies - US$1,791,622

728. MoI seeks compensation for the loss of traffic department equipment and supplies, including maps and traffic signs.

729. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

730. In light of the above, the Panel recommends compensation in the amount of US$1,241,000 out of the US$1,791,622 claimed.

(f) Office furniture & equipment - US$9,372,748

731. MoI seeks compensation for office furniture and equipment losses, including desks, chairs, shelves, cabinets, photocopiers, fax machines and typewriters. 193/

732. The Panel finds that adjustments should be made for inadequate accounting for depreciation, saved expenses and insufficient evidence.

733. In light of the above, the Panel recommends compensation in the amount of US$6,715,000 out of the US$9,372,748 claimed.

(g) Warehouse equipment and supplies - US$39,649,782 194/

734. MoI seeks compensation for losses of warehouse equipment and supplies including firearms, ammunition, airport security equipment and uniforms. 195/ The Panel has considered the value of the items lost based on MoI's pre-invasion financial statements due to the loss of most of its pre-invasion invoices, and stock and other records. The Panel therefore finds that an adjustment should be made for insufficient evidence.

735. The Panel finds that further adjustments should be made for overstatement and inadequate accounting for depreciation.

736. In light of the above, the Panel recommends compensation in the amount of US$26,484,000 out of the US$39,649,782 claimed.

### 3. Bank accounts and securities - US$1,701,496

737. MoI claims compensation for cash taken from its various safes, including those located in the General Financial Department. MOI asserts that cash in the safes typically comprised monthly salaries, cash from the collection of fees for traffic fines and fines imposed by the Immigration Department, cash advances for employees going on leave and deposits from persons involved in accidents. Applying the principles set out at paragraphs 406 of the First "F3" Report, the Panel finds that the claim is compensable subject to there being probative evidence, such as contemporaneous records or witness testimony, as to amounts ordinarily held in the safes by MoI. 196/

738. The Panel finds that adjustments should be made for incorrect method of valuation and insufficient evidence.

739. MoI further claims that the cash lost included an amount of Lebanese lire deposited as security by a litigant involved in a civil action before the domestic courts. Following its investigations, the Panel finds that although the civil action was concluded in June 1994 in favour of the depositor, MoI has not reimbursed the depositor. In the circumstances, the Panel finds that MoI has not suffered a loss and so does not recommend any compensation in respect of the Lebanese lire lost.

740. In light of the above, the Panel recommends compensation in the amount of US$1,282,000 out of the US$1,701,496 claimed.

### 4. Public service expenditures - US$828,819 197/

741. MoI asserts that it incurred a variety of expenses in establishing and operating two emergency offices in Saudi Arabia at Damman and Jeddah from October 1990 until April 1991. MoI claims that these offices were necessary in order that its Computer Centre could create and maintain a database of Kuwaiti citizens living abroad during Iraq's invasion and occupation of Kuwait and to plan for the emergency recovery efforts following liberation.

742. The Panel, applying the principles set out at paragraph 79 of the First "F3" Report (repeated as paragraph 79 of the annex), finds that MoI's decision to establish and operate the offices for the period was reasonable in the circumstances. Accordingly, the Panel finds that the reasonable costs of so doing are compensable, subject to any deductions for expenses that would ordinarily have been incurred in MOI's operations in Kuwait.

743. The Panel finds that adjustments should be made for inadequate accounting for residual value.

744. In light of the above, the Panel recommends compensation in the amount of US$610,000 out of the US$828,819 claimed.

## V. Directorate General of Civil Aviation

### Government Claim No. 59, UNCC Claim No. 5000191

Table 22. Summary Table for Directorate General of Civil Aviation

| Loss type/Loss element | Amount claimed US$ | Amount recommended US$ | Paragraph references |
|---|---|---|---|
| Real property | 8,528,168 | 5,427,000 | 745-748 |
| Other tangible property | 93,418,606 | 23,868,000 | 749-751 |
| Total | 101,946,774 | 29,295,000 | |
| Interest | 16,201,720 | | |

### 1. Real property - US$8,528,168

#### (a) Terminal 1, communications centre and other buildings - US$8,528,168 198/

745. The Directorate General of Civil Aviation ("DGCA") is an independent agency of the Government and is responsible for all aspects of civil aviation in Kuwait, including the operation of Kuwait International Airport (the "Airport"). DGCA claims that the Airport's Terminal One was destroyed by fire and explosives and that other buildings, including the communications centre and the Airport security buildings, were severely damaged or destroyed.

746. DGCA seeks compensation for the replacement costs for the above buildings, estimated as an average cost per square metre, to which a measure of depreciation was applied. The Panel finds that adjustments should be made for overstatement, saved expenses and insufficient evidence.

747. Terminal One, the communications centre and two smaller buildings, namely, the deluge building and the engine test building, required demolition after liberation. DGCA claims the costs incurred under two contracts for such demolition. The Panel finds that, although one of the contracts for demolition was not awarded using competitive procurement procedures, the costs incurred were reasonable and the absence of such procedures did not lead to increased costs. However, the Panel finds that an adjustment should be made for insufficient evidence.

748. In light of the above, the Panel recommends compensation in the amount of US$5,427,000 out of the US$8,528,168 claimed.

### 2. Other tangible property - US$93,418,606

#### Communications equipment - US$92,230,467

Meteorological equipment - US$1,188,139

749. DGCA seeks compensation for the loss of communications and meteorological equipment, including long range radar stations, a receiver station, a transmission station, the control centre, observation stations, a high frequency receiver, a station used for receiving signals regarding humidity, temperature and pressure, and a hydrogen generator. Other equipment was damaged. The Panel notes that some of the equipment has been replaced, but that the specifications of the replacement items differed from the items lost. DGCA based its claim on the estimated cost of replacing all the equipment lost, but was unable to provide details of the equipment yet to be purchased, nor a breakdown or particulars of the estimated cost. 199/

750. The Panel finds that it is unable precisely to quantify the losses sustained and that an adjustment should be made for insufficient evidence.

751. In light of the above, the Panel recommends compensation in the amount of US$23,868,000 out of the US$93,418,606 claimed.

## V. SUMMARY OF RECOMMENDATIONS

752. The following is a summary showing, for each second instalment claim, the principal claim amount and the Panel's recommended award.

Table 23. Summary of the principal claim amount and the Panel's recommendation for each second instalment claim

| Claimant | Principal claim amount (US$) | Recommendation (US$) |
|---|---|---|
| Ministry of Finance - Kuwait Emergency and Recovery Program | 533,472,120 | 432,309,059 |
| Kuwait Institute for Scientific Research | 390,343,692 | 104,699,000 |
| Ministry of Public Works - Bayan Palace, Amiri Diwan, Telecommunications Tower, Audit Bureau, and MEW-MPW Headquarters construction and repair projects | 232,874,040 | 105,128,000 |
| Ministry of Electricity and Water - Stores Department, Communications Systems, Emergency Electrical Department, Primary Substations, and Water Division | 362,234,083 | 215,702,865 |
| Ministry of Defense - Navy Fast Attack Craft | 483,440,514 | 63,957,000 |
| Ministry of Electricity and Water - Power Plants, Underground Cables and Overhead Lines Maintenance Department, Electrical Network Projects Construction Department, Shuwaikh Distillation Facilities, Salaries, and Computer Center | 606,672,157 | 321,455,000 |
| Ministry of Information - Dar al-Athar al-Islamiyya Collection | 61,036,607 | 20,770,000 |
| Ministry of Public Works - Mishref Neighborhood Center, Kuwait University, Old Sief Palace, Government Testing Center, Computers, Stores, Equipment, Furniture, Salaries | 79,446,364 | 25,487,000 |
| Ministry of Defense - Reconstruction of Naval Base and Support Facilities | 63,453,966 | 39,946,000 |

| | | |
|---|---|---|
| Kuwait University - Tangible Property Losses and Payment or Relief to Others | 264,379,603 | 123,816,000 |
| Ministry of Oil | 7,882,908 | 2,990,048 |
| Kuwait Municipality | 196,459,271 | 105,202,000 |
| Ministry of Public Works - Buildings Construction Department, Local Roads Construction Department, Motorways Department, Sanitation Department, Buildings and Roads Maintenance, and Bubiyan Bridge | 177,026,963 | 64,849,000 |
| Ministry of Health | 422,193,464 | 196,223,000 |
| Ministry of Planning | 34,053,732 | 13,699,000 |
| Environment Protection Council | 4,136,255 | 2,467,000 |
| Ministry of Communications - Real and Tangible Property, Contract Losses, Payment or Relief to Others | 229,638,928 | 123,915,000 |
| Public Authority for Applied Education and Training | 120,776,864 | 66,519,326 |
| Public Authority for Agriculture Affairs and Fish Resources | 46,921,883 | 19,654,576 |
| Ministry of Interior - Buildings, Coast Guard, Communications Equipment, Criminal Evidence Equipment, Computer Equipment, Traffic Department, Office Furniture and Equipment, Warehouses, Currency, and Emergency Offices | 154,518,335 | 100,051,000 |
| Directorate General of Civil Aviation - Terminal 1, Communications Center and Other Buildings, Communications Equipment and Meteorological Equipment | 101,946,774 | 29,295,000 |
| Total | 4,572,908,523 | 2,178,134,874 |

Geneva, 13 September 2000

(Signed) L. Yves Fortier, Q.C.
Chairman

(Signed) Andrew Jacovides
Commissioner

(Signed) Reiner Soll
Commissioner

Notes

1/ *The Panel's report and recommendations in relation to the first* instalment of the "F3" claims (the "first instalment claims") can be found in the "Report and recommendations made by the Panel of Commissioners concerning the first instalment of "F3" claims" (S/AC.26/1999/24) (the "First "F3" Report").

2/ A text of which is annexed to decision 10 (S/AC.26/1992/10).

3/ Being the coalition of States assembled in response to Iraq's invasion and occupation of Kuwait.

4/ In the "Report and recommendations of the Panel of Commissioners appointed to review the well blowout control claim (the "WBC Claim")" (S/AC.26/1996/5/Annex) (the "WBC Report"), the Panel of Commissioners, in interpreting this phrase, found that any bombing of oil wells by the Allied Coalition Forces did not break the chain of causation between Iraq's invasion and occupation of Kuwait and the losses claimed in relation to the damage to those wells (see paragraph 86 of the WBC Report).

5/ See, for example, the claims of the Ministry of Defense considered at paragraphs 258 to 274 and 374 to 380.

6/ S/AC.26/Dec.19 (1994).

7/ It should be noted that, in a number of cases, the Panel has recommended adjustments to the amounts claimed for other tangible property losses to reflect the pilferage that would have occurred even in the absence of Iraq's invasion and occupation of Kuwait (see, for example, paragraphs 228 and 352). Such pilferage is not a direct loss as a result of Iraq's invasion and occupation of Kuwait.

8/ The Panel requested information from relevant claimants as to the reconstruction and repair work undertaken since the submission of their claims and has taken account of the responses received.

9/ Including research reports, computer files, analysis and specimens relating to scientific projects, and computer software.

10/ See paragraph 24 of the First "F3" Report (repeated as paragraph 24 of the annex) and paragraphs 137 to 138 of the First "F3" Report.

11/ UNCC Claim No. 5000038.

12/ Ministry of Electricity and Water and Kuwait Institute for Scientific Research.

13/ See further paragraphs 235, 241, 280 and 286.

14/ See further paragraphs 170 to 176 and 240.

15/ See further paragraphs 358 and 359 of the First "F3" Report, at which the Panel considered a claim for salaries paid to employees referable to

the time they spent on training. The claimant was operated as a commercial entity and had hired these employees to replace those who left Kuwait as a direct result of Iraq's invasion and occupation of Kuwait and did not return after liberation. The Panel found that no compensation should be awarded because the loss was subsumed in the claimant's loss of revenue claim.

16/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

17/ The Panel has instructed the secretariat to provide details of its recommendations to those Panels of Commissioners that are reviewing the contractors' claims.

18/ In cases where the claimant intends to enter into a post-liberation contract in the future, the Panel has calculated its price at such time as it would be reasonable, in all the circumstances, to expect it to have been entered into.

19/ Provided that this amount does not exceed the amount claimed.

20/ Kuwait Institute for Scientific Research, see further paragraphs 156 to 164.

21/ See further paragraph 156.

22/ See further paragraph 57 of the First "F3" Report (repeated as paragraph 57 of the annex).

23/ The receivable may be claimed in part as a loss of property (such as the underlying product or information) and/or in part as a loss of revenue.

24/ This programme is described at paragraph 52.

25/ The assumptions were as follows:

(a) there would be a protracted siege of Kuwait City;

(b) the fighting in Kuwait City would result in widespread disruption of food and water distribution, medical services and other essential public services;

(c) there would be a large number of civilian casualties that could not be accommodated in U.S. Army hospitals; and

(d) the population of Kuwait City would be approximately 800,000 at liberation and KERP would need to provide sufficient food, water, health supplies and other goods and services to support that population for three months.

26/ The Panel notes that certain Consumed Goods, such as food, that were not in fact consumed by the end of the emergency period, retained no value.

27/ That is, that:

(a) the Receiving Agency has deducted the residual value of the Transferred Goods from its real and/or other tangible property loss claim; or

(b) the Receiving Agency has deducted the value of its post-liberation inventory (which includes the goods received pursuant to KERP) from the value of its pre-invasion inventory; or

(c) if the Receiving Agency received Transferred Goods of greater value, or a longer remaining useful life, than those lost as a direct result of Iraq's invasion and occupation of Kuwait, an appropriate adjustment has been made in the present claim.

28/ The Panel issued Procedural Orders Nos. 6, 45 and 46 in September 1999, March 2000 and May 2000, respectively, to elicit such support.

29/ See further the explanation of the shorthand expression "incorrect valuation of KERP assets" at paragraph 47. Such adjustments are applied at paragraphs 358, 437, 507, 511 and 713. The Panel has not otherwise identified the Receiving Agencies, as many claimants were such Receiving Agencies.

30/ The Panel also finds that those purchases made at prices higher than the norm were of such urgency that the claimant could not reasonably be required to wait until prices had returned to normal patterns.

31/ The amount referable to the claim of the Kuwait Public Transportation Co. is US$6,808,000 and that to the claim of the Kuwait Ports Authority is US$379,000.

32/ The only exception was one sub-contract for the transport of some mobile generators by air. The Panel finds that, in light of the fact that only one type of aeroplane could accommodate the generators, it was reasonable for the contractor to choose the only sub-contractor that could provide that type of aeroplane.

33/ The Farah report at paragraph 477 noted that:

> "Virtually all [of KISR's] buildings have been defiled and minor damage inflicted to finishes, as well as to electrical and plumbing systems ... Fires were set selectively in both the University and the Kuwait Institute for Scientific Research. Gunfire was intentionally aimed at the latter's main building, causing some structural damage. Restoring the Institutes's building will require around 50 per-cent of replacement value for burned areas and blast-damaged areas and 10 per-cent elsewhere".

34/ Paragraph 3(b) of Governing Council decision 13 (S/AC.26/1992/13) provides that "When the Commission learns, either through information

provided by the claimant or through other means, and before paying compensation from the Fund, that a claimant in categories "C", "D", "E" and "F" has received compensation elsewhere for the same loss, the amount already received will be deducted from the compensation to be paid from the Fund to that claimant for the same loss".

35/ The Farah report at paragraph 473 provided that "The entire libraries of [KISR] and all the nine university faculties, totalling over 300,000 volumes and 8,300 periodical titles and a quarter of a million technical reports on microfiche, have been removed, reportedly by truck to Iraq." And at paragraph 475 "Overall, there has been a mass removal of equipment. The June 1990 book value of that belonging to the Kuwait Institute for Scientific Research was KD 22 million, and the University inventory is far larger. The removal was systematic."

36/ The Farah report provided at paragraph 473 that "Twenty years of accumulated research data by the Kuwait Institute for Scientific Research researchers and the University professors have been taken away, burned or reduced to litter. The mission's inspection showed that lecture notes, research data and personal technical libraries are missing."

37/ See further endnote 23 of the First "F3" Report (repeated as endnote 23 of the annex). With the exception that compensation will be recommended for any portion of the cost of the post-liberation contract referable to repairing damage that was a direct result of Iraq's invasion and occupation of Kuwait, subject to verification and valuation.

38/ The Panel has therefore not found it necessary to consider whether such debts would have been written off under international accounting practice.

39/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

40/ The amount claimed is non-material.

41/ Being Jordanian, Palestinian, Sudanese and Yemeni employees.

42/ The amount claimed in respect of incentive bonuses is non-material.

43/ See further paragraph 45.

44/ Including both the employer's and the employees' contributions.

45/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

46/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

47/ The repairs to the other residences were performed by KERO. The Panel is satisfied that there is no duplication.

48/ Including the hosting of conferences and receptions by the Amir of Kuwait.

49/ Applying the Panel's approach to claims for the cost of temporary repairs and for the cost of renting temporary premises (see paragraphs 72 to 77 of the First "F3" Report (repeated as paragraphs 72 to 77 of the annex)).

50/ Following the Panel's approach to the claim of the Civil Service Commission for temporary furniture (see paragraphs 296 to 297 of the First "F3" Report).

51/ The tangible property lost from the other residences was replaced by KERO and the Amiri Diwan. The Panel is satisfied that there is no duplication.

52/ Part of the amount claimed is non-material.

53/ Part of the amount claimed is non-material.

54/ The amount claimed is non-material.

55/ Part of the amount claimed is non-material.

56/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

57/ Part of the amount claimed is non-material.

58/ See further paragraph 63 of the First "F3" Report (repeated as paragraph 63 of the annex).

59/ Part of the amount claimed is non-material.

60/ Except for one contract in relation to initial site restoration for one of the projects.

61/ The Panel finds, as more fully set out at paragraphs 374 to 380, that losses resulting from the destruction of the facilities at the Base are direct losses.

62/ This is the exception to the general findings at paragraphs 15 and 16.

63/ The Panel also finds that the same conclusion applies to the works planned for the Istiglal.

64/ Part of the amount claimed is non-material.

65/ In relation to the power station that is alleged to have been destroyed, MEW's claim is only for dismantling and debris removal costs and

the cost of repairs to some equipment related to the production of desalinated water (see paragraphs 290 to 293).

66/ See the general discussion on depreciation at paragraphs 17 to 19.

67/ Part of the amount claimed is non-material.

68/ At paragraph 66 of the First "F3" Report (repeated as paragraph 66 of the annex), the Panel found that damage to buildings that are not to be rebuilt is compensable. As the repairs in this claim were, in fact, undertaken, the Panel finds that the appropriate measure of damage is the costs thereby incurred.

69/ Except for some equipment related to the desalination process which is claimed under "Power plants" considered at paragraphs 275 to 278.

70/ The Panel has made a notional addition to correct an understatement that it found in reviewing this claim.

71/ Part of the amount claimed is non-material.

72/ This is an application of the Panel's finding at paragraphs 74 and 75 of the First "F3" Report (repeated as paragraphs 74 and 75 of the annex) that compensation should be provided for the cost of renting temporary premises while damaged premises were repaired.

73/ Part of the amount claimed is non-material.

74/ Except for those items on exhibition outside of Kuwait.

75/ The Panel's recommendation has taken these items into account in the manner set out at paragraph 44.

76/ MoInf was found liable to pay, and has paid, US$60,379,745 to the private owners of the Collection. This is equal to the sum of the amounts claimed by MoInf for tangible property losses and for the losses discussed at paragraphs 328 to 333.

77/ This is because the seller must incur, amongst other things, dealer mark-up and shipping and conservation costs.

78/ As there is no evidence that any attempt has been, or will be, made to replace the lost pieces.

79/ Except that the valuation was by reference to the seller's price.

80/ The Panel does not recommend any compensation in relation to the retrieval of a small number of the pieces which were owned by the private owners of the Collection, but were not part of the Collection. An adjustment has been made to reflect that portion of the amount claimed that is referable to the retrieval of such pieces.

81/ At paragraph 24 of the First "F3" Report (repeated as paragraph 24 of the annex), the Panel found that compensation should be provided for the

reasonable costs of mitigating the damages resulting from Iraq's invasion and occupation of Kuwait.

82/ The amount claimed is non-material.

83/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

84/ The Panel has assessed the unit price by reference to the time at which it would have been reasonable, in all the circumstances, to place the replacement order.

85/ The Panel's recommendation has taken some items of heavy equipment, which were returned pursuant to UNROP, into account in the manner set out at paragraph 44.

86/ MPW does not claim loss of revenue for the period 2 August 1990 until 31 May 1991 because it asserts that to do so would be to duplicate its claim for relief paid to employees.

87/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

88/ Part of the amount claimed is non-material.

89/ "Base" is defined at paragraph 265.

90/ Iraq asserted in its response to Procedural Order 1 that various items were returned through UNROP, but provided no details of such items. The Panel does not therefore recommend any adjustment to the amount claimed in this regard.

91/ MoD notes that the contracts do not cover all repairs, and that some items were to be repaired or replaced as variations to those contracts.

92/ Some of the repairs were not completed until October 1995.

93/ The Farah report at paragraphs 473, 474 and 477 noted that:

> "...The entire libraries of ... all the nine university faculties, totalling over 300,000 volumes and 8,300 periodical titles and a quarter of a million technical reports on microfiche, have been removed, reportedly by truck to Iraq. The books, manuscripts and files of four widely read journals published by the Faculties of Arts and Law have been plundered or destroyed. ...
>
> The sophisticated equipment used for generating the research data is also gone. ... [The losses include] a large VAX machine from the Central Services of the University ... Smaller mainframes have been taken from the Faculties of Science and Engineering and complete specialized teaching laboratories in psychology, languages, commerce and geography are gone. Costly spectrometers, centrifuges and virtually every other sophisticated machine and instrument have been

taken from the science and engineering laboratories, while all faculties together have lost more than 1,000 personal computers. Typewriters were removed on a massive scale ...

All modern furniture has been taken from classrooms, offices and meeting rooms. Even non-academic spaces were plundered. The University sports stadium had 20,000 plastic seats removed."

94/ The amount claimed is non-material.

95/ See further paragraph 45.

96/ The Panel has made an adjustment which is de minimis as defined in paragraph 48 for overstatement.

97/ The amount claimed is non-material.

98/ See further paragraph 138 of the First "F3" Report.

99/ See further paragraph 45.

100/ This is a negative amount because the Municipality asserts that it received vehicles pursuant to KERP of a value in excess of those that it lost as a direct result of Iraq's invasion and occupation of Kuwait.

101/ Part of the amount claimed is non-material.

102/ The Panel notes that not all of the tenants ceased doing business for the whole of the occupation and emergency periods.

103/ The Panel finds that the period claimed is the period that revenue from the slaughterhouses was affected as a direct result of Iraq's invasion and occupation of Kuwait.

104/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

105/ All constituent parts are non-material items.

106/ The Municipality asserts in its claim that three of the nine contracts were abandoned after liberation and claims the amount paid for the work performed up to Iraq's invasion and occupation of Kuwait in respect of them. However, in its response to Procedural Order 29 issued in November 1999, the Municipality submitted that the work under one of these three contracts was, in fact, continued by two contracts entered into in late 1991 and 1992, respectively. The Panel accepts this assertion. The Panel's recommendation for this contract is, however, limited to the amount initially claimed by the Municipality.

107/ A contract for the construction of a funeral parlour on Failaka Island was abandoned as a result of the Government's decision to evacuate Failaka Island. A contract for the construction of prefabricated buildings at Wafra was abandoned because the buildings were completely destroyed and because of the Municipality's decision not to replace its lost heavy equipment.

108/ Provided that this amount does not exceed the amount claimed.

109/ With some adjustments to reflect post-liberation works that constituted enhancements or other additional costs that were not a direct result of Iraq's invasion and occupation of Kuwait.

110/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

111/ Provided that this amount does not exceed the amount claimed.

112/ This is the same rationale as that applied by the Panel to claims by tenants for repairs performed by them which were properly the responsibility of the landlord (see paragraph 68 of the First "F3" Report (repeated as paragraph 68 of the annex)).

113/ With the exception of a contract for a forestry irrigation project for which the saved expenses were calculated for the period 2 August 1990 to 31 May 1991.

114/ The Panel finds that there is no duplication of the claim of Kuwait Municipality considered at paragraphs 422 to 424.

115/ The post-liberation contract with the consultant was entered into at the same price as the pre-invasion contract.

116/ All constituent parts are non-material items.

117/ The Panel notes that the Farah report, at paragraphs 426 and 435, describes some of MoH's losses:

> "The inspection by the mission showed that there was not a single room of [the building of the Ministry, situated on the sea-front] left untouched: ceilings had been destroyed, files and documents had been strewn on the floors, corridors and staircases. Computers and typewriters had been taken away ...
>
> The Infectious Diseases Hospital is a 220-bed facility ... [t]wo of its wards were hit by bombs, causing structural damage and loss of equipment".

118/ The Panel notes that repairs to MoH's property were also carried out by KERO and is satisfied that such repairs are not claimed by MoH.

119/ Part of the amount claimed is non-material.

120/ The Panel notes that certain replacement medicines were purchased pursuant to KERP and is satisfied that they have been accounted for by MoH.

121/ Part of the amount claimed is non-material.

122/ The Farah report described the loss of significant quantities of medical equipment. For example, at paragraph 431, it is noted that "There are six general hospitals in Kuwait ... [T]he extensive and modern equipment of these hospitals, particularly in the electro-medical field, was either removed from the country, or exposed to damage as a result of the lack of maintenance and skilled personnel to operate it."

123/ The amount claimed is non-material.

124/ See further the discussion of the KERP claim commencing at paragraph 52.

125/ Part of the amount claimed is non-material.

126/ The Panel's recommendation has taken these items into account in the manner set out at paragraph 44.

127/ The Panel notes that certain items were replaced pursuant to KERP and is satisfied that they have been accounted for by MoH.

128/ Part of the amount claimed is non-material.

129/ The amount claimed is non-material.

130/ Part of the amount claimed is non-material.

131/ The Panel finds that the proportion of former employees who failed to return after liberation did not vary significantly from nationality to nationality.

132/ It should be noted that the cost incurred by the Government in providing medical treatment in countries other than Kuwait during the occupation period was claimed by the Ministry of Finance in Claim No. 5000112 (see paragraphs 188 to 211 of the First "F3" Report).

133/ See further paragraph 45.

134/ Part of the amount claimed is non-material.

135/ The Panel notes that certain repairs to MoP's real property were effected by and claimed for by KERO and is satisfied that there is no claim for such repairs by MoP.

136/ Part of the amount claimed is non-material.

137/ The amount claimed is non-material.

138/ Part of the amount claimed is non-material.

139/ The work boats and control boats were used primarily to clean up oil spills and the surveillance boat was used for monitoring water pollution.

140/ The Panel has taken the work boats into account in the manner set out at paragraph 44 and in so doing has made a further adjustment to the amount claimed.

141/ The amount claimed is non-material.

142/ The amount claimed is non-material.

143/ The Panel is satisfied that there is no duplicate claim for the chromatograph.

144/ The amount claimed is non-material.

145/ Part of the amount claimed is non-material.

146/ The Panel has found an arithmetical error in the amounts claimed in respect of the South Subahiya exchange, and has made a notional addition to the amount claimed so as to correct that error. The Panel also notes that repairs to another main centre, the Telecom Centre (known as the TEC building), were carried out by KERO and MPW and pursuant to KERP and is satisfied that there is no claim for such repairs contained in this claim.

147/ The Panel notes that certain repairs to the microwave links were carried out pursuant to KERP and is satisfied that MoC has not claimed for such repairs.

148/ The Panel finds, however, that MoC would have undertaken that conversion at dates earlier than set out in its claim and therefore that the useful life of certain parts of the network was overstated.

149/ MoC's claim includes the cost of temporary repairs that were not intended to be permanent, but the Panel notes that such repairs have not in fact been replaced by permanent repairs.

150/ Known as transmultiplexers.

151/ The Panel has identified an arithmetical error in the amounts presented and has corrected the error so that the amount claimed is correctly stated as US$24,221,209. Part of the amount claimed is non-material.

152/ In a supplemental submission for this claim, filed in March 1999, MoC reduced the amount claimed for other tangible property by US$1,362,804, so as to account for property returned by Iraq to MoC through UNROP. Having reviewed the nature of the property returned, the Panel has applied the reduction against this loss element. The Panel has made an adjustment to the amount of the UNROP deduction so as to conform the exchange rate used by MoC in the reduction calculation to that used in the claim itself.

153/ The Panel has identified an arithmetical error in the amounts presented and has corrected the error so that the amount claimed is correctly stated as US$612,947.

154/ Some items were replaced pursuant to KERP and the Panel is satisfied that such items are not claimed by MoC.

155/ The Panel notes that MoC's lost vehicles were in part replaced pursuant to KERP and are in part claimed in MoC's claim number 5000045.

156/ All constituent parts are non-material items.

157/ The Panel considered the response to Procedural Order 30 issued in November 1999 in making this finding.

158/ Provided that this amount does not exceed the amount claimed.

159/ See further paragraph 45.

160/ See further paragraphs 17 to 19.

161/ The amount claimed is non-material.

162/ Part of the amount claimed is non-material.

163/ All constituent parts are non-material items.

164/ PAAET has shown that the failure of the majority of the employees to return was due to Iraq's invasion and occupation of Kuwait and, therefore, that the reasonable costs of locating and attracting new employees to replace these employees was a direct loss. The remaining employees who failed to return were of Jordanian, Palestinian, Yemeni or Sudanese origin. Having considered all the evidence and information available, the Panel has concluded that there is insufficient evidence to demonstrate that the failure of these employees to return to Kuwait was a direct result of Iraq's invasion and occupation of Kuwait. The Panel therefore does not recommend any compensation for the amounts claimed for locating and attracting their replacements.

165/ The course, which was given in the summer of 1992, covered the studies for the academic year 1991/92 because that academic year had been spent studying the material from the lost 1990/91 academic year.

166/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

167/ The Panel finds that there is insufficient evidence to show that the fall in this revenue to zero for the year ended 30 June 1993 was a direct result of Iraq's invasion and occupation of Kuwait.

168/ The amount claimed is non-material.

169/ See further paragraph 45.

170/ The amount claimed is non-material.

171/ In its response to Procedural Order 1, Iraq asserted that the employees could have returned to Kuwait using the return component of tickets issued to them by the Government as part of the employees' home leave entitlements under their employment contracts. Iraq did not provide any support for this assertion and, in addition, the Panel notes that it

would be unlikely that any tickets issued before 2 August 1990 would still have been valid at the end of the emergency period.

172/ Part of the amount claimed is non-material.

173/ Part of the amount claimed is non-material.

174/ The Panel finds that the saved expenses exceed the amount claimed for the Zoo animals but not for the Arabian horses.

175/ The amount claimed is non-material.

176/ Part of the amount claimed is non-material.

177/ Part of the amount claimed is non-material.

178/ The amount claimed is non-material.

179/ See further paragraph 45.

180/ Part of the amount claimed is non-material.

181/ See further paragraphs 51 to 58, 433 and 434 of the First "F3" Report.

182/ The amount claimed is non-material.

183/ Part of the amount claimed is non-material.

184/ The Panel notes that certain repairs to MoI's buildings were carried out in the first year following liberation by KERO and is satisfied that MoI has not claimed for such repairs.

185/ Part of the amount claimed is non-material.

186/ The Panel's recommendation has taken 13 of these boats, which were returned pursuant to UNROP, into account in the manner set out at paragraph 44.

187/ See further the discussion of the KERP claim commencing at paragraph 52.

188/ Part of the amount claimed is non-material.

189/ The Panel notes that certain equipment was replaced pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

190/ Part of the amount claimed is non-material.

191/ The Panel notes that certain computer equipment was purchased for MoI pursuant to KERP and is satisfied that MoI has not claimed for such computer equipment.

192/ The amount claimed for the purchase of this mainframe computer falls below the level of materiality adopted by the Panel.

193/ The Panel notes that certain equipment was purchased for MoI pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

194/ Part of the amount claimed is non-material.

195/ The Panel notes that certain equipment was replaced pursuant to KERP and is satisfied that MoI has not claimed for such equipment.

196/ In its original claim filed in 1994, MoI valued its loss on the basis of its cash balance as of 30 June 1990, but later stated that its claim should be measured by reference to the estimated balance as at 31 July 1990 (thereby decreasing the amount stated to have been lost). The Panel has taken at its starting point such lower value.

197/ Part of the amount claimed is non-material.

198/ Part of the amount claimed is non-material.

199/ The Panel notes that certain repairs and replacements were carried out by KERO and pursuant to KERP and is satisfied that they are not claimed by DGCA.

Annex

RE-STATEMENT OF SECTIONS II, III, IV AND V OF THE FIRST "F3" REPORT (SEE PARAGRAPH 7 OF THIS REPORT)

## II. PROCEDURAL HISTORY

### A. The nature and purpose of the proceedings

6. In undertaking its review of the first instalment claims, the Panel has borne in mind:

(a) the status and functions of the Commission;

(b) its claims review processes, which are documentary rather than oral, and inquisitorial rather than adversarial; and

(c) the Panel's function to provide an element of due process in the review of claims filed with the Commission.

7. The Panel has, like other panels, carried out a thorough and detailed factual and legal review of these claims, performing the investigative role incumbent on the panels in the claims review process.

### B. The procedural history of the claims

8. Prior to the formal submission of the first instalment claims to the Panel, the secretariat of the Commission (the "secretariat") performed a detailed review of these claims and determined, in accordance with articles 14 and 15 of the Rules, that each of the claims complied with the formal and procedural requirements of the Commission. The review also demonstrated that the complex and technical nature of a number of the elements in the claims would require the Panel to make use of independent loss adjusters and accountants as expert consultants ("expert consultants"). These were selected in August 1998. The expert consultants have worked closely with the Panel, preparing for the Panel's consideration reports covering the verification and valuation issues raised by the claims.

9. Pursuant to article 32 of the Rules, the Panel was provided with claim summaries recording the significant legal and factual issues identified in the claims as well as other information, such as legal briefing notes and reports produced by observers shortly after the liberation of Kuwait, to assist the Panel in its review of the claims.

10. The review of each claim by the Panel identified in many cases a need for further information and evidence. Each of the claimants was given the opportunity to provide the Panel with such further information and evidence.

11. The Executive Secretary of the Commission submitted a report 3/ dated 8 July 1998 to the Governing Council in accordance with article 16 of the Rules, which set out the first instalment claims and discussed the main factual and legal issues relating to them. A number of governments, including the Government of Kuwait and the Government of the Republic of Iraq, submitted additional information and views on the issues raised in response to that report.

12. Given the nature of the claims, the Panel determined that due process would require the provision to Iraq of copies of all of the claim files submitted by claimants. These were forwarded to Iraq pursuant to Procedural Order 1 issued in respect of each claim on 14 September 1998.

13. Iraq submitted a response to each of the first instalment claims. Each response included a statement of its position regarding the Commission's procedures and operation and raised specific issues of law, verification, valuation or fact. The Panel has duly considered these responses and has investigated those issues of fact accompanied by sufficient information to make investigation possible. Details of the responses so investigated, and the Panel's findings in respect of them, are set out in the consideration of each of the claims below.

14. In its responses to the claims, Iraq also requested the Panel to hold oral hearings into each claim at which Iraq would be permitted to attend and make submissions. Iraq has made similar requests in relation to the Commission's review of other claims. The Panel has considered carefully whether such hearings are required for the processing of the claims and their proper review by the Panel. The Panel concludes, in common with other panels, that the submissions and documents made available to it and the additional information obtained by it have permitted a thorough and fair determination and evaluation of each of the claims. Consequently, the Panel finds that it is not necessary to hold oral hearings.

15. At the direction of the Panel, technical missions were sent to Kuwait and to Winchester, Virginia, in the United States of America, 4/ to investigate certain factual and valuation issues and to carry out on-site inspections. Six such missions took place between August 1998 and June 1999. In June 1999, one of the Panel members, Commissioner Jacovides, participated in one such mission to Kuwait. The missions to Kuwait also included meetings with PAAC

and the Government of Kuwait's advisers, interviews with certain claimant witnesses, inspection of documents and visits to sites of physical damage and reconstruction. The findings of each mission are set out in the relevant sections of this report. The Panel has also reviewed videotape evidence submitted by the Government of Kuwait.

## III. THE LEGAL FRAMEWORK

### A. Applicable law

16. The law generally to be applied by the Panel is found in article 31 of the Rules. This provides that the Panel shall apply:

> "Security Council resolution 687 (1991) and other relevant Security Council resolutions, the criteria established by the Governing Council for particular categories of claims, and any pertinent decisions of the Governing Council. In addition, where necessary, Commissioners shall apply other relevant rules of international law".

17. The principal substantive rule applied by the Panel is paragraph 16 of Security Council resolution 687 (1991). In this, the Security Council declared Iraq to be liable under international law "for any direct loss, damage, including environmental damage and the depletion of natural resources, or injury to foreign Governments, nationals and corporations, as a result of Iraq's unlawful invasion and occupation of Kuwait".

18. The Panel has taken note of certain findings contained in the reports of other panels of Commissioners, which have been approved by the Governing Council, regarding the interpretation of relevant Security Council and Governing Council resolutions and decisions, as well as the reports of the Executive Secretary issued pursuant to article 16 of the Rules and the responses to them.

### B. The directness requirement

19. The Panel construes the requirements of paragraph 16 of Security Council resolution 687 (1991) as meaning that all loss or damage directly caused by Iraq's invasion and occupation of Kuwait is in principle compensable and, correspondingly, that any loss or damage not so caused is not compensable.

20. The Panel has also taken into account the Governing Council's guidance on the interpretation of these requirements, notably as set out in decisions 7 5/ and 15. 6/

21.Paragraph 34 of decision 7 provides as follows:

> "These payments are available with respect to any direct loss, damage, or injury to Governments or international organizations as a result of Iraq's unlawful invasion and occupation of Kuwait. This will include any loss suffered as a result of:
>
> (a) Military operations or threat of military action by either side during the period 2 August 1990 to 2 March 1991;
>
> (b) Departure of persons from or their inability to leave Iraq or Kuwait (or a decision not to return) during that period;
>
> (c) Actions by officials, employees or agents of the Government of Iraq or its controlled entities during that period in connection with the invasion or occupation;
>
> (d) The breakdown of civil order in Kuwait or Iraq during that period; or
>
> (e) Hostage-taking or other illegal detention".

22.Paragraph 6 of decision 15 confirms that there "will be other situations where evidence can be produced showing claims are for direct loss, damage or injury as a result of Iraq's unlawful invasion and occupation of Kuwait", in relation to which claimants will have to prove that a loss is "direct". Paragraph 3 of decision 15 emphasises that for any alleged loss or damage to be compensable, the "causal link must be direct".

23.The Panel finds that there is ample authority in international law, including the reports of other panels, 7/ to support the view that a "direct loss" in these circumstances is one which, as a matter of objective assessment, would have been expected as a normal and natural consequence of Iraq's invasion and occupation of Kuwait. This is the test of causation that the Panel has applied to these claims.

### C. Mitigation

24. In assessing the first instalment claims, the Panel has borne in mind the duty of the injured party to take all reasonable measures to avoid, diminish or mitigate the damage resulting from Iraq's invasion and occupation of Kuwait, 8/ and finds that the reasonable costs of so doing are themselves compensable.

## IV. CONSIDERATION OF COMMON LEGAL ISSUES

### A. Approach

25. Many of the legal issues raised in the first instalment claims arise more than once. The Panel therefore finds it appropriate to report first on issues common to several claims and then, in the light of these common considerations, to examine and report on each claim individually. The Panel now turns to such common legal issues.

### B. Property losses

26. As to property losses, the Panel notes that in the first instalment claims there are 10 claims totalling US$494,622,998 for loss of real property and there are 16 claims totalling US$93,667,608 for loss of tangible property.

27. Some claimants assert that their premises were occupied by Iraq. All claimants provide evidence of loss, damage or destruction by way of witness statements, damage assessment reports and/or photographs or videotapes. Understandably, much of this evidence dates not from the occupation period itself, but rather from the period after liberation, when Ministry or other Government of Kuwait personnel were able to re-enter the premises of the various Ministries or other Government entities, as the case may be.

28. The Panel has also taken into consideration the Farah report, 9/ which sets out in detail 10/ the level of damage and destruction found after liberation. The report noted that the damage, while generally minor from a structural point of view, included significant damage to walls and installations. It also noted widespread vandalism and looting of equipment and furnishings.

29. The Panel is accordingly satisfied that the evidence submitted in support of the claims for property losses is sufficient to demonstrate that the losses were direct, falling within the provisions of paragraph 34 of decision 7 11/ and those of paragraph 13 of decision 9. 12/

30.Accordingly, the Panel recommends compensation for such losses, subject to their verification and valuation carried out in the manner described in paragraphs 109 to 115 below. In relation to claims for vehicles, the Panel reviewed a motor vehicle valuation table submitted by the Government of Kuwait that lists the value of a wide range of motor vehicles in Kuwait as at 1 August 1990. After independent inquiries were made by the expert consultants as to the accuracy of this table, the Panel, in common with other panels, accepted it. 13/

## C. Relief paid to employees

31.At the outset it is necessary to make it clear that the discussion in this section, and the amounts examined in it, relate not only to the first instalment claims, which are the principal subject of this report, but also to the other "F3" claims. This explains the large size of the totals involved.

32.Thirty-six of the sixty-two "F3" claimants seek compensation for relief payments made to the Kuwaiti and Gulf Cooperation Council ("GCC") employees of the Government of Kuwait. The payments amounted to the salaries the employees would have earned, but did not receive, in respect of the occupation and emergency periods. Each such claimant seeks compensation in respect of its own employees. These employees, some of whom remained in Kuwait during the occupation and emergency periods and some of whom left after Iraq's invasion and occupation of Kuwait, did not receive their regular salaries during those periods. The Government made the relief payments in a series of lump-sum payments commencing after liberation, and claims the amounts so paid. The total amount of the compensation sought for these payments in all the "F3" claims is US$2.03 billion and the number of employees in respect of whom such claims are made is around 100,000.

33.The facts surrounding each of these claims are sufficiently similar for the Panel to consider them together. The amounts claimed constitute a not insignificant percentage of the total compensation sought by the Government of Kuwait. The Panel has therefore found it appropriate to set out its consideration of these claims in detail.

34.The Government supplemented each of these claims by submitting in May 1998 additional information that included the following background:

> "In 1991, Kuwait's Council of Ministers directed, in partial relief for the major losses suffered as a result of Iraq's invasion and occupation,

that Government organizations should pay the salaries that their Kuwaiti and GCC employees would have earned during the seven-month occupation period ... and three-month recovery period".

35. Paragraph 36 of decision 7 provides in part as follows:

"[P]ayments are ... available to reimburse payments made or relief provided by Governments or international organizations to others - for example to nationals, residents or employees or to others pursuant to contractual obligations - for losses covered by any of the criteria adopted by the Council".

36. The Panel finds, on the basis of the considerable evidence now made available to it, that the payments for which the claimants seek compensation were made to compensate for the loss of the employees' financial support during the occupation and emergency periods. Such payments constitute payments made or relief provided to others within the meaning of paragraph 36 of decision 7 and are thus in principle compensable.

37. In assessing the amount of compensation to be paid, the Panel has borne in mind the number of employees concerned and the impossibility of calculating the actual entitlement of each individual. It has therefore proceeded on the basis of calculating the compensation payable in respect of the employees by way of an average individual entitlement (the "entitlement"), using information provided by the claimants and the Government so as to ensure that the entitlement is as representative as possible.

38. The two main factors determining the entitlement are the length of the period for which payment of compensation is justified and the amount of salary which would have been received by each individual during that period, less appropriate deductions as explained in paragraphs 41 to 48 below.

39. With respect to the first factor, the Panel finds that compensation should be awarded based on the period that the employees were reasonably unable to work. Recalling that the positions of the employees were suspended, not terminated, the Panel concludes that it was usually not possible for the employees to resume their positions until the end of the emergency period. The employees were thus reasonably unable to work during both the (seven-month) occupation period and the (three-month) emergency period, a total of ten months.

40.With respect to the second factor, the first step undertaken by the Panel is to compare the monthly amounts ordinarily received by way of salary by the employees and the amounts actually paid retrospectively. 14/

41.The Panel notes that the Government of Kuwait operates a social security system which confers pensions and similar benefits on employees, and which is funded by contributions from employers and employees (the "Social Security Fund"). These contributions are calculated as a percentage of salary and the contributions of the employees, being five per cent of gross salary, are deducted at source from the salaries paid to them. As part of the first step described above, the Panel requested the Government to confirm whether the amounts paid to the employees and claimed as relief took into account the employees' contributions where necessary and whether there had been any loss of benefits to the employees. The Government responded that there had been no loss of benefits, and that some but not all claimants had accounted for the contributions by paying to the employees only their gross salary less the five per cent deduction. The Panel has taken the Government's response into consideration and reviewed it in light of the evidence provided in support of each claim. The Panel has found that suitable account has been taken in a number of claims. The Panel has therefore determined that an adjustment should be made to the amounts claimed in cases in which the Panel is not satisfied that the social security contributions have been adequately accounted for.

42.In order to ensure that the entitlement accounts for the employees' true losses, as a second step the Panel considers and brings into account the employees' entire financial receipts (including the benefits received from relief programmes) and expenditures over the compensable period. Furthermore, the Panel has applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses. In other words, "saved" expenses, that is, expenses that the employees would ordinarily have incurred if Iraq's invasion and occupation of Kuwait had not taken place, but did not in fact incur during the period for which compensation is recommended, fall to be deducted from the entitlement.

43.In order to ascertain what other relief payments were made and what expenses the employees might have "saved" during the period, the Panel issued Procedural Order 15 in respect of all relevant first instalment claims, seeking information in this connection. A comprehensive response was received, which provided a model of the average Government employee covering the amount and nature of his or her income and expenditure and the benefits obtained by him or her through policies implemented by the Government of Kuwait during the period.

44.This response showed that the pre-invasion levels of consumption in Kuwait were very high, exceeding on average the average Government employee's monthly salary. 15/ It also described a wide-ranging programme of relief payments. 16/ The Panel has taken this information into account. 17/

45.The Government submitted that only a few employees who left Kuwait could demonstrate that their costs outside Kuwait exceeded the relief received and that these employees have made individual claims before the Commission. With regard to those who did not leave Kuwait, the Panel assumes that any losses in respect of additional costs incurred could similarly have been the subject of claims before the Commission. Accordingly, the Panel assumes that additional living expenses and the relief paid in respect of them need not be taken into account when calculating the employees' true losses.

46.In the light of the above considerations, the Panel finds that deductions for "compensation received elsewhere for the same loss" should be made in respect of the free food and utility services provided in Kuwait over the period above. 18/

47.The Panel further finds, from the model provided by the Government of Kuwait, that the employees who were outside Kuwait during the period did indeed "save" certain expenses in Kuwait. 19/ That is, they did not incur a proportion of ordinary and anticipated living expenses over the period.

48.On the basis of the matters noted in paragraphs 46 and 47 above, the Panel recommends a deduction of 60 per cent from the amounts claimed. That is, the Panel recommends a total award of 40 per cent of the relief paid to employees and claimed in each of the relevant "F3" claims, subject to verification of the amounts claimed and the Panel's assessment of the evidence presented. 20/ Accordingly, the Panel recommends an award to each respective claimant calculated in this manner.

## D. Loss of revenue

49.A number of the Government of Kuwait's claims seek compensation for the loss of revenue that would have been earned by the relevant claimant during the occupation, emergency and subsequent periods. The facts and circumstances of each claim vary according to the nature of the revenue-generating activity, but the basic question of the compensability of the Government's loss of revenue is relevant to all such claims, and the Panel has therefore considered the question as a common legal issue.

50.The Panel has considered whether losses of the Government of Kuwait's revenues are compensable in accordance with paragraphs 1 to 4 of Governing Council decision 9. 21/ These paragraphs state that the propositions and conclusions contained therein "shall apply to compensation for the loss of earnings or profits and other business losses covered by Security Council resolution 687 (1991)" and, after noting the liability of Iraq for direct losses, continue that "[u]ltimately it will be up to the commissioners to identify the applicable principles and apply them to the circumstances of particular cases".

51.The Panel is satisfied that Iraq's invasion and occupation of Kuwait led to the interruptions in Government services complained of, but that, by reason of the diversity of economic factors bearing upon each case, the determination of any revenue losses suffered has to be made separately for each claim.

52.The Panel will discuss in section VI below, in connection with the first instalment claims, whether individual revenue losses are compensable and, if so, the measure of compensation and the time period in respect of which compensation should be paid. The Panel finds that the time period is that during which the revenue was affected as a direct result of Iraq's invasion and occupation of Kuwait. The Panel has considered such time periods by reference to historical revenue trends and notes that the periods may in some cases extend to several years.

53.The Panel appreciates that acceptance of a loss of revenue as a compensable claim assumes that the revenue-generating activity would have continued at the same general level if Iraq's invasion and occupation of Kuwait had not occurred. It is, of course, true that all revenue collection depends upon some activity by a third party, e.g., a licensee seeking a licence for which he or she must pay. But the fact that the collection of such revenue is predicated upon the action of a third person cannot be seen as breaking the chain of causation between Iraq's invasion and occupation of Kuwait, on the one hand, and the particular loss of revenue, on the other. This is because the third party's action belongs to a class of conduct the continuation of which in periods of normality can reasonably be expected. Losses of revenue arising from the fact that fines or other penalties were not generated during the occupation and emergency periods are also to be treated in the same manner as other claims for loss of revenue and are to be valued accordingly.

54.In order to have a basis for assessing the extent and nature of revenue that could have been expected to be earned and that which was in fact earned, and to assist it in the consideration of the individual losses of revenue described below, the Panel issued Procedural Order 4 to obtain information as

to revenue earned by relevant claimants in the period from 1 July 1985 to 30 June 1995. The information thus provided has been taken into consideration by the Panel in reaching the recommendations in section VI below.

55. In calculating revenue losses, the Panel has again applied the general principle that any incidental benefit or gain on the part of a victim should be offset against his or her losses.

56. This principle involves two considerations: first, that any expenditure which would have been incurred in the generation of the revenue lost, but which has not been so incurred, should be brought into account to reduce the claimed loss; 22/ second, where the Panel has identified extraordinary or increased revenues flowing from Iraq's invasion and occupation of Kuwait, such revenues should be accounted for in like manner. The Panel has therefore taken any such extraordinary income into account in connection with the loss of revenue claims.

57. The Panel has also taken account of amounts going to generate revenue in one Ministry or Government entity that would have been paid by another. This is because any such loss of revenue by one Government entity is an expense saved by the entity that would otherwise have paid it.

58. The Panel notes that the revenue of the Government of Kuwait may have been affected by changes in the population composition of Kuwait after liberation and has considered the impact of such changes where necessary.

## E. Contract interruption losses

59. The Government of Kuwait has presented a number of claims for compensation for losses sustained due to the interruption of contracts that were in existence on 2 August 1990 23/ and which had been concluded between a Government entity and third-party contractors, generally for the construction of a building or facility. The work was usually under way at the time of the invasion of Kuwait. In most cases, the relevant Government entity asserts that the contractor refused to complete the remaining contract work without extra payment to cover the costs of site restoration, increases in the cost of materials and other cost increases in the post-liberation period. The claimants usually negotiated a revised price with the contractors.

60. "Contract interruption losses" therefore encompass claims for increased costs under re-negotiated contracts, reflecting in certain cases additional work, such as site restoration. In considering these losses, the Panel, like the "F1" panel, 24/ has noted the obligation on each claimant, arising from

article 35(1) of the Rules, to demonstrate that a particular loss is eligible for compensation. In the context of contract interruption losses, therefore, the claimants must demonstrate that the price increases were a direct result of Iraq's invasion and occupation of Kuwait.

61. Recalling the obligation upon the claimants under article 35(3) of the Rules to submit sufficient evidence to prove their losses, the Panel sought information as to the conditions pertaining in the construction and building industry both before and after the occupation period, including information as to the number and nationality of construction workers in both periods. The Panel has considered such information in arriving at its recommendations on the first instalment claims set out below.

62. The Panel finds that, following the liberation of Kuwait, there was a general increase in the price of goods and services in Kuwait and that such increase was the result of many factors, the precise effect of which it is impossible to identify.

63. In relation to only three causes of increases in price has the Panel been able to determine that the causal link was "direct". These are price rises shown to be linked specifically to:

(a) site restoration costs (including those related to the replacement of materials and equipment taken during Iraq's invasion and occupation of Kuwait and which were needed for the resumption of construction contracts);

(b) additional transportation costs (including double-handling costs); and

(c) additional insurance costs. 25/

64. The Panel has determined that price increases caused by these factors are compensable. As regards other causes of price increases, the Panel was unable to conclude that they were a direct result of Iraq's invasion and occupation of Kuwait.

## F. Buildings not intended to be rebuilt

65. The Government has presented a number of claims for compensation for damage to buildings, usually schools or mosques, which will not be rebuilt principally because of their location near the border between Kuwait and Iraq or on Failaka Island. The claim is usually made for the estimated cost of reconstructing the building.

66. The Panel finds that the damage to such buildings is, in principle, compensable. In particular, the Panel finds that Iraq is liable for damage caused by it, even if the Government of Kuwait decides not to rebuild or repair the damage. However, the Panel has awarded as compensation the cost of reconstruction only in cases in which it is satisfied that the relevant building was incapable of repair. In other cases, only the cost of repair is awarded. In appropriate cases, the Panel has made adjustments for such items as depreciation, wear and tear, and reduced maintenance expenses arising from not having to maintain the building in the future. The compensation is measured by the cost at such time as it would be reasonable, in the ordinary course of events, to expect reconstruction or repair to have taken place.

## G. Damage to leased premises

67. The Government of Kuwait has presented a number of claims for the cost of repairing damage to premises which it occupied as tenant at the time of Iraq's invasion and occupation of Kuwait.

68. The Panel has noted that, in common with a number of legal systems, such repairs may legally have been the responsibility of the landlord pursuant to the lease and/or Kuwaiti law. To require the landlord to undertake the repairs and subsequently claim the cost from the Commission or (if the landlord was unwilling or unable to undertake the repairs) to require the Government of Kuwait to undertake the repairs and reclaim the cost from the landlord and not the Commission would, in the circumstances of Iraq's invasion and occupation of Kuwait and the widespread damage to the Government's facilities, be too technical and rigid an approach. The Panel finds that where premises leased to the Government were damaged as a result of Iraq's invasion and occupation of Kuwait, the cost of the repairs should be awarded to the person who paid for them, provided that the other party to the lease has not been awarded compensation for the same loss.

69. In order to ensure that the Commission recommends payment only once for repairs to each of the damaged buildings in question, the Panel instructed the

secretariat to examine the claims of the relevant landlords and advise the Panel of any duplication of claims in respect of the repairs. An award has been made by the Panel only where no duplicate claim has been awarded by the Commission.

## H. Contractual provisions allowing penalties for late completion or other breaches of contract

70. The Government of Kuwait has presented a number of claims for compensation for the full price of contracts for repair or reconstruction made after the end of the occupation period, although there were provisions within such contracts for a reduction in the contract sum for late completion or other breaches. Although it is at times apparent that a situation may have existed giving rise to the right to use such provisions, in most instances there is no evidence of advantage having been taken thereof.

71. The Panel has considered the effect of such provisions, and of whether or not they were invoked, on the extent of compensation payable. The Panel notes the obligation on each claimant to obtain a reasonable price for remedial works. Having regard to this obligation, and as part of the overall determination of the reasonable cost of the repair or reconstruction, the Panel finds that where the evidence shows that a reduction in the contract sum could have been insisted on, a reduction in the claim to that extent is warranted.

## I. Temporary repairs followed by more permanent repairs

72. The Government of Kuwait has presented a number of claims for the cost of urgent work undertaken to effect temporary repairs (for example, the claim in relation to the Kuwait Emergency Reconstruction Office). The cost of subsequent and more permanent repair has also been claimed in many cases, sometimes found in the same claim as the temporary repairs and sometimes in a different claim.

73. The Panel has considered whether and to what extent the assessment of loss should take into account the cost of such temporary repairs. Many of the Government's facilities and services suffered a considerable amount of damage as a result of Iraq's invasion and occupation of Kuwait. In many cases, and particularly in the immediate post-liberation period, it was essential rapidly to restore these facilities and services to at least a minimum operating capacity. In other cases, temporary repairs prevented greater damage being caused to the Government's facilities and services and thus helped to mitigate

future damage. The Panel therefore considers that it was reasonable for the Government to address required emergency repairs as priorities and then to undertake permanent repairs at a later time. The Panel finds that the cost of temporary repairs which were reasonably necessary in the circumstances is compensable and has proceeded on this basis.

## J. Temporary premises

74. The Government of Kuwait has presented a number of claims for the cost of renting residential or business premises in Kuwait during periods in which the construction of new premises or the repair of existing premises was delayed as a result of Iraq's invasion and occupation of Kuwait. The claim for compensation is for the cost of renting alternative premises for varying periods following liberation.

75. The Panel determines that in principle such costs should be awarded for a reasonable period following liberation. In each specific case, consideration has been given to the nature of the damage and to the time normally likely to be necessary to effect site restoration, repairs or to complete construction. Associated with the latter question is that of the attribution of the cause for the relevant delay. In this regard, the Panel finds that the principles set out in paragraph 63 above are pertinent.

76. The Panel similarly finds that the costs of providing temporary housing to employees who, before the invasion, were provided with accommodation by a Ministry, is compensable to the same extent as the costs of temporary premises.

77. The Panel has sought to ascertain the reasons for the delay in the construction of new buildings and has scrutinised the evidence to identify both the original contractual date for completion of the new premises and the date for completion under the resumed contract. It has done so to ensure that delays arising other than from Iraq's invasion and occupation of Kuwait, including pre-invasion delays, are not considered in the ascertainment of the loss.

## K. Temporary headquarters outside Kuwait

78. The Government of Kuwait has presented a number of claims for the expenses of operating offices outside Kuwait during the occupation and emergency periods and for some short period thereafter.

79.The Panel recalls that as a result of Iraq's invasion and occupation of Kuwait, many of the Government's usual operations in Kuwait could not continue there. The Government was therefore obliged to conduct its operations elsewhere. Further, in some situations, the operation of offices outside Kuwait prevented greater damage being caused to the Government and to the people remaining in Kuwait. The Panel thus finds that the cost of operating offices outside Kuwait is compensable where the decision to establish such operations was reasonable in the circumstances. In each such claim, however, the Panel has been careful to ensure that only reasonable costs are allowed and it has deducted expenses that would ordinarily have been incurred in Kuwait if Iraq's invasion and occupation of Kuwait had not occurred.

## L. Cost of returning employees to Kuwait

80.The Government has also presented a number of claims for the cost of returning its employees to Kuwait after liberation to enable them to resume work. Most of these employees were non-Kuwaitis who left Kuwait following Iraq's invasion and occupation to return to their home countries.

81.The Panel finds that the reasonable costs of returning employees to Kuwait are compensable:

(a) under paragraph 34(b) of decision 7 where the cost of returning employees is a necessary consequence of evacuation; or

(b) where the return of the employees was a reasonable step in mitigation of loss (for example, where it is shown that the cost of returning an employee is less than the cost of hiring and training a new employee).

82.In each case the Panel has considered whether the costs were reasonable and were wholly incurred as a result of Iraq's invasion and occupation of Kuwait. In particular, the Panel has taken into consideration such factors as whether the employees would have been granted home leave during the period in question and whether the employees travelled in a class higher than appropriate. 26/

## M. Pre-paid rent

83.A number of the first instalment claims seek compensation for rent paid in advance on office or other premises ("pre-paid rent"). The claimants maintain that no benefit for the amounts paid was derived during the seven month occupation period and during the months following liberation because the Government was unable to use the premises. In each such case the Government

claims the amount of the pre-paid rent for the period during which it is asserted that no benefit was obtained.

84. The Panel finds that compensation should be awarded where rent has been pre-paid on premises but only for the period that the Government of Kuwait was unable to use the premises as a direct result of Iraq's invasion and occupation of Kuwait. 27/ The measure of compensation should be the amount of pre-paid rent referable to that period, since such rent is an accurate indicator of the value of the benefit lost. The Panel has considered in each first instalment claim whether the claimant has demonstrated that its inability to use the premises for the period claimed was a direct result of Iraq's invasion and occupation of Kuwait, such as would have been the case if, for example, Iraq had occupied the premises in question.

85. The Panel is satisfied that there were no means by which the Government of Kuwait could have recovered the pre-paid rent and that, therefore, there has been no failure to mitigate on the part of the Government.

## N. Avoiding over-compensation

86. The Panel notes that the Government of Kuwait's activities in Kuwait were interrupted during the occupation and emergency periods and it would appear, therefore, that a proportion of usual Government expenditure may not have been incurred. The Panel has begun examining and will continue to examine throughout its review of the F3 claims whether and to what extent to bring into account any such unincurred expenses by way of set-off against the amount of compensation awarded to the Government.

87. In relation to the first instalment claims, the Panel has adopted and applied the following principles:

(a) loss of revenue claims should be awarded net of the identifiable expenses which would ordinarily have been incurred in the generation of that particular revenue (including, where appropriate, salaries); 28/

(b) where it can be established that expenses were saved as a result of damage to or destruction of assets, adjustments should be made to reflect this (see, for example, the claim for quality control testing equipment in the claim of the Ministry of Commerce and Industry at paragraph 317 below); and

(c) in claims for the cost of operating temporary offices outside Kuwait, considered at paragraphs 78 and 79 above, adjustments should be made to reflect any expenses saved by not operating offices in Kuwait.

88.The Panel does not consider it appropriate to deal with the more general question of unincurred expenses, which have not been brought into account as set out in the preceding paragraph, in a piecemeal fashion in the first instalment claims. It prefers, instead, to deal with the matter in a single consideration which can best take place in the context of the claim relating to the Kuwait Investment Authority 29/ to be reviewed in the third instalment. At that time the Panel will wish further to consider the following factors:

(a) that not all the Government's losses are compensable by the Commission, and not all Government losses have been claimed;

(b) that the Panel's recommendations in relation to certain claimed losses may include reductions for evidentiary reasons;

(c) that any reduction in Government expenses may have had a correlative effect on the benefits that the Government and its citizens would otherwise have enjoyed; and

(d) that revenue claims have been submitted by Kuwaiti entities in other claim categories and, in some cases, compensation may have been awarded by the Commission.

89.In this connection, the Panel requested from the Government of Kuwait, amongst other things, information as to the historic income and expenditure position of the Government and the Kuwaiti economy as a whole, a history of the financial reserves of the Government for the period 1986 to 1996, details as to claims made to the Commission for loss of revenue and an indication as to revenue losses for which no claim has been lodged with the Commission.

90.The Government of Kuwait submitted a detailed response which provided extracts from its national accounts and the bases upon which its financial information is recorded, a description of budgets and procedures, explanations as to the bases of presentation of financial accounts and statistics, and details of revenue claims before the Commission. The Panel notes that the Government keeps confidential certain information regarding its financial reserves and assets and that only limited secondary sources of such information are available.

91.The adjustments in the first instalment claims in relation to matters falling within sub-paragraphs 87(b) and 87(c) above will be borne in mind by the Panel when eventually considering the more comprehensive question of the overall position of the Government as set out in paragraph 86 above.

## O. Claims preparation and claims processing costs

92. The Government of Kuwait has presented a claim for claims preparation costs (being the fees of attorneys and other professional persons, and costs of support and secretarial staff, reproduction, and communication facilities). 30/ This claim aggregates such costs incurred in relation to the preparation of virtually all "F3" claims. It also includes the Government's own claims processing costs (being the cost of the administrative work involved in dealing with claims, including the establishment of necessary infrastructure such as PAAC). It is not clear which portion of the claim is for claims preparation costs and which portion is for claims processing costs.

93. The Panel has been notified by the Executive Secretary that the Governing Council intends to resolve the issue of the compensability of claims preparation costs in the future. Accordingly, the Panel makes no recommendation with respect to the claim for such costs.

94. As to claims processing costs, the Panel notes that decision 18 31/ provides for compensation for such costs by allowing for the deduction of a set fee from payments made to claimants. In light of this decision, the Panel considers itself bound not to recommend any additional compensation in respect of claims processing costs.

## P. Exchange rate

95. The claims for repair costs or replacement materials involve losses incurred in Kuwaiti dinars ("KD") or other currencies, but in all cases converted into and claimed in United States dollars. The Commission issues awards in United States dollars. The Panel must therefore consider whether the exchange rates used by the claimants are appropriate.

96. The Government of Kuwait states that, generally, when a single payment was made the exchange rate used was the rate on the date of payment; when many payments were made the rate was the average rate or rates for the relevant period over which the payments were made; and, for future payments, the rate was the average rate for the most recently available twelve-month period.

97. The Panel finds that such an approach is reasonable in the circumstances. In some cases other factors operate. These are described in the recommendations for the claims concerned.

## Q. Interest

98.The Government seeks interest on the principal claim amount in respect of each first instalment claim. Decision 16 provides in part that "interest will be awarded from the date the loss occurred until the date of payment, at a rate sufficient to compensate successful claimants for the loss of use of the principal amount of the award". The Governing Council has stated that it will address the methods of calculation and payment of interest in the future. It is thus for the Panel to determine only the date from which interest is to run.

99.The Panel has considered how for the purposes of calculating interest the date of a specific loss is to be determined. It finds that, in the context of the enormous number of individual claim items, within several loss types, a specific determination for each claim item is impractical. The Panel has, therefore, concluded that for this purpose all losses should be deemed to have occurred on one single date.

100. The Government of Kuwait itself identified two possible dates at two different stages of the proceedings. The Government first selected, in its "Summary Report of Government Claims" submitted in July 1994, 26 February 1991 as the relevant date. This was on the basis that it was the last date on which Iraq could have taken or damaged assets, and that the Government was entitled to interest from that date, regardless of when expenditure was incurred on repairing or replacing the asset. A further reason was that since many of the losses occurred near the end of the occupation, the date of liberation was closer to the date of the actual losses than any other. In a subsequent submission, however, filed in May 1998, the Government amended its first submission to provide that interest should accrue from 2 August 1990, the date on which Iraq invaded Kuwait.

101. The matter has to a large extent already been examined in the "Report and Recommendations made by the Panel of Commissioners Appointed to Review the Well Blowout Control Claim (the "WBC Claim")" 32/ wherein the panel took the view that Kuwait did not suffer loss until it actually disbursed the costs of repair or reconstruction. The Panel shares this view and is therefore unable to accept Kuwait's second submission, that interest should commence on 2 August 1990.

102. Having regard to the varying dates of loss and the need to select one date for interest purposes, the Panel determines that, in all the circumstances, the date of loss for calculation of interest is 26 February 1991. 33/

## V. VERIFICATION AND VALUATION

### A. The importance of evidence

103. The Rules direct that each claim must be supported by sufficient evidence. Thus, article 35(1) of the Rules prescribes that:

> "Each claimant is responsible for submitting documents and other evidence which demonstrate satisfactorily that a particular claim or group of claims is eligible for compensation pursuant to Security Council resolution 687 (1991). Each panel will determine the admissibility, relevance, materiality and weight of any documents and other evidence submitted."

104. In relation specifically to governmental claims, article 35(3) provides that:

> "... such claims must be supported by documentary and other appropriate evidence sufficient to demonstrate the circumstances and amount of the claimed loss".

105. Pursuant to these provisions, each claimant has submitted a considerable body of documentary and other evidence in support of its claim. Some of this material was filed with the statement of claim itself; substantial further material has been provided in response to questions raised by the Panel; and still other material has been submitted to the Commission and reviewed (in some cases during on-site inspections) in Kuwait and elsewhere.

106. The evidence submitted by the claimants, including that additionally requested by the Panel, comprises, in most cases, a sample of the documents available. The size of the sample has been determined by reference to the nature of the loss and the character and quantity of the evidence available.

107. The Panel has addressed a number of specific requests to various Ministries and other Government entities for additional information and documents in their possession. These requests took the form of procedural orders, and other requests issued pursuant to procedural orders, of which to date some 100 have been issued. The responses to each such order or request, and their accompanying documents, have been duly considered by the Panel and its expert consultants.

108. The Panel has noted the claimants' general assertions that physical damage and destruction during Iraq's invasion and occupation of Kuwait

included the destruction of large numbers of documentary records, though the degree of destruction varied from claimant to claimant. As a result, certain elements of claims are supported only by witness statements or by reports without underlying primary documentation. The Panel, in the observance of due process and by the issue of procedural orders to claimants, has on occasion requested further evidence from the claimants in order to ascertain the degree of destruction of records with a view to assessing the evidence as a whole.

## B. The procedures adopted by the Panel to verify and value the first instalment claims

109. The principal tasks of the Panel are to assess the evidence with a view to determining whether the claimed loss or damage has in fact occurred and, in light of that determination, to assess the amount of compensation to be recommended in respect thereof.

110. In carrying out these tasks, one of the prime objectives of the Panel is to ensure consistency in the examination of the material and the resulting recommendations. This cannot be achieved other than by a systematic approach rigorously pursued in accordance with the requirements of the Rules. For this purpose the Panel has established three series of steps.

111. The first is a general verification and valuation programme applicable to all claims. This sets out procedures for the verification and valuation of the claims, including an initial assessment of the character and probative value of all the evidence originally submitted in support of each claim.

112. The second series of steps comprises specific verification and valuation programmes. These set out more detailed procedures for certain loss types, namely, contract, real property and tangible property losses. They include the identification of particular documents needed to establish the existence and terms of contracts and the title and character of real and tangible property as well as those needed to value the losses claimed.

113. The third series of steps comprises supplemental verification and valuation programmes. These set out further detailed procedures for each loss element and were designed at an early stage of the review of a claim to meet its particular character. The programmes identify any additional evidence and other information beyond that originally submitted by the claimant which the Panel considers necessary for a proper review of the claim. This step has not been carried out if the loss element under review falls below the level of materiality which is described below.

114. In applying these programmes the Panel has systematically scrutinised the evidence according to its type, date, 34/ quality and quantity and has made consistent adjustments to reflect the extent to which the evidence is not sufficient.

115. Any attempt by the Panel to set out in detail in relation to the individual claims before it the precise manner in which it has found that the evidence is sufficient or not sufficient would involve it in a complex exposition of a very large volume of material and would not be feasible within the confines of a panel report. Moreover, the weighing of evidence is not an exact science but necessarily involves some exercise of judgement or discretion by the Panel. The Panel has, therefore, normally not gone beyond a statement of its conclusions in each case.

## C. Evidential status of the reports of the claimants' accountants and engineers

116. Each claim contains an accountant's report and a number of them contain an engineer's report, in all cases commissioned by the Government of Kuwait.

117. The accountant's reports include descriptions of the claimed losses, summaries of the valuation methodologies adopted and schedules showing the derivation of the amounts claimed.

118. The engineer's reports contain evaluations of the repair and restoration works, commenting on the extent to which the works were required to repair invasion-related damage, the scope of works including enhancements, the degree of documentary support for the work said to have been done, the avoidance of duplication within the "F3" claims and, where contract interruption losses are claimed, a comparison of the work done under the pre-invasion and post-liberation contracts.

119. The Panel notes that all of the reports have been commissioned by the Government of Kuwait for the purpose of the submission of its claims to the Commission. They do not, therefore, constitute original or primary evidence, in contrast to, for example, written contracts, receipts and invoices. As such, the Panel has treated these accountant's and engineer's reports as supporting documents and not as primary evidence of the matters of fact asserted in them.

## D. Materiality

120. The sheer bulk of the claims before the Panel obliged it to focus on those parts of the claims 35/ which carry a greater risk of significant overstatement. The line between these parts and others is called the "level of materiality", with those parts of the claims above the level of materiality being called "material" and those below it "not material".

121. The Panel has set the level of materiality at US$500,000. However, the Panel has reduced the level of materiality in the following cases:

(a) where it is necessary to ensure the examination in sufficient detail of at least 80 per cent of the total value of any loss element across the "F3" claims, the level of materiality has been reduced accordingly, but not below US$100,000;

(b) for claims with a value below US$5,000,000 (excluding interest, claims preparation costs and any other part of the claim that the Panel finds not to be a direct loss) the level of materiality has been reduced to 10 per cent of the total value of the claim, but not below US$100,000; and

(c) in exceptional instances in which the Panel has found it appropriate to do so.

122. The Panel has determined that the use of these materiality levels will ensure a detailed review of over 99 per cent of the principal claim amount of the "F3" claims. The Panel considers this to be a necessary and therefore suitable approach to achieving its objective: that is, properly to review the "F3" claims within the time allotted for that task.

123. While the general and (where relevant) specific verification and valuation programmes have been carried out in the review of all loss elements, a supplemental verification and valuation programme has been designed and followed only for material loss elements. Further, so far as the non-material loss elements are concerned, the Panel has not requested any documentation other than that originally submitted by the claimant. In assessing the sufficiency of the evidence submitted in support of these loss elements, the Panel has regard to the fact that the claimant has not been requested to submit additional evidence and that to conclude that the evidence submitted is insufficient may unfairly penalise the claimant concerned. The Panel therefore assesses the sufficiency of the evidence in support of these loss elements in two stages; first, by applying the criteria described at paragraphs 114 and 115 above in the usual manner and, second, by adjusting its

conclusions to reflect the average sufficiency of all the evidence submitted in support of the claim concerned and/or the relevant loss element, as appropriate.

## E. Reporting on the verification and valuation of the first instalment claims

124. The expert consultants have provided the Panel with comprehensive reports on the results of the verification and valuation programmes for the first instalment claims, indicating their opinions as to the extent that each is supported by the evidence and the value to be given to each. The Panel has considered these reports in detail prior to coming to its conclusions and recommendations. These are set out in section VI below. The Panel is satisfied that each of the recommendations which it has made is reasonable in all the circumstances.

125. In explaining in any given case why a claim or part thereof has been reduced or rejected the Panel has sometimes used one or more of the following shorthand expressions, the weight of which will necessarily vary from case to case:

(a) "method of valuation" means that the amount claimed has been reduced because the valuation method used by the Government of Kuwait is not appropriate under the circumstances of the loss or the Panel has used an alternative method of valuation (such as the use of book value rather than the use of depreciated replacement cost);

(b) "overstatement" is used where an error of fact or of calculation is discovered;

(c) "inadequate procurement process" is used where the Government has failed to use an appropriate procurement process to ensure that the loss is kept to a minimum. In many cases, the appropriate procurement process would involve resort to competitive tendering, but such procedures may not be appropriate in the context of urgent or emergency repair work, for example;

(d) "enhancement" is used where the Government in replacing damaged or lost items has obtained an asset that is better than the one previously used, but has failed to give adequate credit for the improvement;

(e) "inadequate accounting for depreciation" is used where the Government has not properly considered the age or the remaining useful life of

the asset as at the date of the loss or has used an inappropriate rate of depreciation;

(f) "inadequate accounting for residual value" is used where an amount is likely to be received from the disposal of an asset at the end of its useful life, and that amount is not adequately taken into account;

(g) "saved expenses" is used where the Government has not incurred expenses that it would ordinarily have incurred had Iraq's invasion and occupation of Kuwait not occurred, or has incurred reduced expenses as a result of the invasion and occupation; and the claim has not been correspondingly reduced. The matter is more fully discussed at paragraph 87 above; and

(h) "insufficient evidence" is used where the Panel considers that the claim must be reduced or rejected because it is not supported by sufficient evidence. 36/

Notes

3/ S/AC.26/1998/R.22.

4/ The U.S. Army Corps of Engineers held documents in Winchester in relation to the claim of the Ministry of Finance - Kuwait Emergency Reconstruction Office (see paragraph 134).

5/ S/AC.26/1991/7/Rev.1.

6/ S/AC.26/1992/15.

7/ Notably, "Report and recommendations made by the Panel of Commissioners concerning the first instalment of individual claims for damages up to US$100,000 (category "C" claims)" (S/AC.26/1994/3), at part II, section D.

8/ Paragraph 9 of Governing Council decision 15 (S/AC.26/1992/15) states that: "The duty to mitigate applies to all claims".

9/ "Report of the Secretary-General on the scope and nature of the damage inflicted on the Kuwaiti infrastructure during the Iraqi occupation" (S/22535).

10/ At paragraphs 370 and following.

11/ Quoted in paragraph 21.

12/ Section II of Governing Council decision 9 (S/AC.26/1992/9) provides at paragraph 13 that "[i]n a case where business property had been lost because it had been left unguarded by company personnel departing due to the situation in Iraq and Kuwait, such loss may be considered as resulting directly from the invasion and occupation". The Panel finds this statement equally applicable to the Government of Kuwait's property left unguarded.

13/ See, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of individual claims for damages above US$100,000 (category "D" claims)" (S/AC.26/1998/1), at paragraphs 267-269.

14/ As a result of Iraq's response to Procedural Order 1 in relation to the claim of the Ministry of Interior (UNCC Claim No. 5000137), the Panel made enquiries in relation to the extent to which the employees had received payment of their salaries in advance prior to the invasion. The Panel also notes that a few employees who received relief payments retrospectively also

received payment for work done during the relevant period. The Panel has, in arriving at the percentage deduction to the claims for relief paid to employees set out in paragraph 48, taken into account the advance payments and the payments for work done.

15/ The Panel has considered the nature of economic activity in Kuwait and has concluded that this situation is explained by the fact that many Kuwaitis are owners or part-owners of businesses from which they derive income in addition to their salaried employment.

16/ The relief provided by the Government of Kuwait covered such items as living expenses while outside Kuwait, the provision of free utilities within Kuwait (by the forgiveness of payment therefor), the forgiveness of consumer debt, the forgiveness of certain rental payments, the distribution of free food, and the payment of a grant to each Kuwaiti individual who remained in Kuwait during the occupation period.

17/ The Panel notes that the response was compiled applying Government of Kuwaiti national accounts and statistics and on the basis of certain assumptions regarding income and expenditure patterns, and has made suitable allowance for the use of such techniques in quantifying its findings.

18/ Amounts provided for living expenses outside Kuwait during the period (under a programme set up by the Ministry of Finance and the subject of UNCC Claim No.5000112) were paid in respect of additional living expenses and do not comprise "compensation received elsewhere". Further, the Panel has not included in its consideration any relief provided for losses other than loss of income, such as relief in respect of loss of amenity, again to ensure that compensation is based upon the employees' true financial losses.

19/ See paragraph 42.

20/ A large percentage of the 60 per cent deduction arises in respect of "saved expenses".

21/ Governing Council decision 9 (S/AC.26/1992/9).

22/ See paragraph 87.

23/ Where the formation of a formal contract was not complete at the time of the invasion, the Panel finds that there ought to be compensation for contract interruption losses only when there is evidence of consensus at the time of the invasion as to the essential provisions of the contract (being the

identification of the parties, the principal undertakings and the price to be paid).

24/ "Report and recommendations made by the Panel of Commissioners concerning part two of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1998/4), paragraphs 70-72.

25/ Increased transport costs arise because some of Kuwait's ports of entry remained closed until October 1991, during which time shipments were landed elsewhere and goods then transported to Kuwait over land. The types of insurance costs include all risks and public liability insurance.

26/ "Report and recommendations made by the Panel Of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6), at paragraph 106.

27/ The Panel views the decision of the "F1" panel in relation to pre-paid rent set out in, for example, "Report and recommendations made by the Panel of Commissioners concerning part one of the first instalment of claims by governments and international organizations (category "F" claims)" (S/AC.26/1997/6) at paragraph 74 as turning on the particular facts found by the "F1" panel.

28/ As stated at paragraph 36, the Panel finds that the relief paid to employees is compensable (on the basis of paragraph 36 of decision 7) as being payment or relief to others. This categorisation is based on a finding that the Government of Kuwait did not, in fact, pay the salaries of its Kuwaiti and GCC employees during the occupation and emergency periods. What it paid, in fact, was an amount of relief measured by reference to the salaries that those employees would otherwise have received. Those salaries therefore constitute a saved expense.

29/ Which, amongst other things, manages the Government's general reserve and future generations funds.

30/ The claim on behalf of the Public Authority for the Assessment of Compensation, UNCC Claim No. 5000193.

31/ (S/AC.26/Dec.18) (1994), at paragraph 1.

32/ (S/AC.26/1996/5/Annex.) ("WBC Report") at paragraphs 227-230.

33/ An exception to this is the claim of the National Committee for Missing and Prisoner of War's Affairs where the date of loss for calculation of interest is determined to be 31 October 1997 (see paragraph 344).

34/ The Panel has considered the three periods during which a document may have come into existence: prior to Iraq's invasion of Kuwait; during the occupation and emergency periods; and thereafter. The Panel accepts that the number and quality of documents which may be expected to exist will vary according to each such period.

35/ Within the loss types (that is, those appearing on the Form F) the claimants have further subdivided the losses into categories which the Panel will refer as "loss elements". For example, "loss of revenue" is a loss element within the "business transaction or course of dealing" loss type. The Panel has approached its review of the claims and their supporting evidence by reference to loss elements as opposed to the more general loss types.

36/ See paragraph 115.

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